



corporate advantage

management liability
insurance policy



Table of Contents

	Page
1. Insuring Clauses	1
1.1 Directors and Officers Liability Cover	1
1.2 Corporation Reimbursement Cover	1
1.3 Corporation Liability Cover	1
1.4 Employment Practices Liability (Corporation & Insured Persons) Cover	1
1.5 Superannuation Trustees Liability Cover	1
1.6 Corporation Crisis Cover	1
1.7 Directors and Officers, Fines and Penalties Cover	1
2. Deductibles, Aggregate Limit and Sub-Limits for Insuring Clauses/Extensions	1
3. Extensions	2
3.1 Advancement of Defence Costs	2
3.2 Reinstatement of Aggregate Limit	2
3.3 Attendance at Official Investigations or Inquiries	2
3.4 Occupational Health & Safety	2
3.5 Retirement Cover	3
3.6 Extended Reporting Period	3
3.7 Continuity of Cover	3
3.8 Insured vs Insured Cover	3
3.9 Current outside Directorships (Non-Profit Organisations)	4
3.10 Run-off Cover for Subsidiaries	4
3.11 Joint Venture Cover	4
3.12 New Subsidiaries	4
3.13 Run-Off Cover For Outside Directorships	4
3.14 Preservation of Indemnity	5
3.15 Estates and Legal Representatives	5
3.16 Spousal Liability Cover	5
4. Optional Extensions	5
4.1 Corporation Fidelity Cover (Non Manifest Intent Wording)	5
4.2 Current Outside Directorships (Other than Non-Profit Organisations)	5
4.3 USA & Canadian Jurisdiction	6
4.4 Pre Acquisition Liability	6
4.5 Pollution Defence Costs	6
4.6 Multi-Year Run-Off after Merger or Consolidation	6

5.	Exclusions	7
5.1	Dishonesty & Fraud - Directors & Officers	7
5.2	Dishonesty & Fraud - Corporation	7
5.3	Known Claims & Circumstances	7
5.4	Breach of Professional Duty	7
5.5	Insured vs Insured	7
5.6	Prospectus Liability	7
5.7	Bodily Injury & Property Damage	7
5.8	Fines and Penalties	7
5.9	Pollution, Nuclear Risks, War & Terrorism	8
5.10	Asbestos	8
5.11	Additional Exclusions Applicable to Insuring Clause 1.3 (Corporation Liability Cover) and Insurance Clause 1.5 (Superannuation Trustees Liability Cover)	8
5.12	Additional Exclusions Applicable to Insuring Clause 1.3 (Corporation Liability Cover)	8
5.13	Additional Exclusions applying to Insuring Clause 1.4 (Employment Practices Liability Cover) and Extension 3.5(1) (Insured vs Insured Cover)	9
5.14	Additional Exclusions Applicable to Optional Extension 4.1 (Corporation Fidelity Cover)	9
5.15	Retroactive Date	9
6.	General Conditions	10
6.1	Authorisation Clause	10
6.2	Severability & Non Imputation	10
6.3	Merger or Consolidation	10
6.4	Claims Co-operation	10
6.5	Allocation	10
6.6	Court Jurisdiction	10
6.7	Investigatory Costs and Payments	10
6.8	Paragraph Headings	11
6.9	Non-Accumulation	11
6.10	Notice	11
6.11	Confidentiality	11
6.12	Gender & Number	11
6.13	Senior Counsel Clause	11
6.14	Settlement Procedure	11
6.15	Subrogation	11
6.16	Territory and Jurisdiction	12
6.17	Other Insurance	12
6.18	Canceling the Policy	12
6.19	Legal Enforceability	13
6.20	Goods and Services Tax	13

7.	Definitions	13
7.1	Claim	13
7.2	Corporation	13
7.3	Crisis	13
7.4	Crisis Loss	14
7.5	Defence Costs	14
7.6	Employment Practice Breach	14
7.7	Fidelity Loss	14
7.8	Indemnity Period	14
7.9	Insured Person	14
7.10	Insurer	14
7.11	Joint Venture	15
7.12	Known Circumstance	15
7.13	Loss	15
7.14	Non-Profit Organisation	15
7.15	Operational Loss	15
7.16	Organisation	15
7.17	Outside Directorship	15
7.18	Penalties	15
7.19	Period of Insurance	15
7.20	Policy	15
7.21	Regulatory Authority	15
7.22	Subsidiary Company	16
7.23	Trust	16
7.24	Trustee	16
7.25	Trustee Responsibility Breach	16
7.26	Wrongful Act	16
8.	The way we handle your personal information	16
	General Insurance Code of Practice	16
	Our Service Commitment	17

In consideration of the payment of the premium stated in Item 8 of the Schedule the **Insurer** will provide the indemnities set out in the **Policy** in accordance with the terms and conditions expressed. Unless expressly specified to the contrary the cover granted by extensions is subject to all the terms and conditions of this **Policy**.

1. Insuring Clauses

1.1 Directors and Officers Liability Cover

The **Insurer** will pay on behalf of an **Insured Person** that **Loss** for which the **Insured Person** may not be legally indemnified by the **Corporation** arising out of any **Claim**, by reason of any **Wrongful Act** committed by an **Insured Person** in their capacity as an **Insured Person**, which **Claim** is first made against the **Insured Person** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

1.2 Corporation Reimbursement Cover

The **Insurer** will pay on behalf of the **Corporation** that **Loss** in respect of which the **Corporation** is legally permitted to indemnify an **Insured Person** arising out of any **Claim**, by reason of any **Wrongful Act**, committed by an **Insured Person** in their capacity as an **Insured Person**, which **Claim** is first made against the **Insured Person** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

1.3 Corporation Liability Cover

The **Insurer** will pay on behalf of the **Corporation** that **Loss** arising out of any **Claim** by reason of a **Wrongful Act** first made against the **Corporation** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

For the avoidance of doubt this operative clause is subject to section 5 Exclusions and additional exclusions section 5.12.

1.4 Employment Practices Liability (Corporation & Insured Persons) Cover

The **Insurer** will pay on behalf of an **Insured Person** and **Corporation** that **Loss** which the **Insured Person** or **Corporation** is legally obliged to pay by reason of any **Claim** for an **Employment Practice Breach** first made against the **Insured Person** or **Corporation** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

Where a conflict arises between this Insuring Clause 1.4 and Exclusion 5.5 (*Insured vs Insured*) of this **Policy**, the provisions of Insuring Clause 1.4 shall prevail.

1.5 Superannuation Trustees Liability Cover

The **Insurer** will pay on behalf of an **Insured Person** that **Loss** which the **Insured Person** is legally obliged to pay by reason of any **Claim** for a **Trustee Responsibility Breach** first made against the **Insured Person** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

1.6 Corporation Crisis Cover

The **Insurer** will pay on behalf of the **Corporation** any **Crisis Loss** which the **Corporation** incurs by reason of a **Crisis** which first occurs during the **Policy Period** and is notified to the **Insurer** during the **Indemnity Period**.

1.7 Directors and Officers, Fines and Penalties Cover

Notwithstanding exclusion 5.8 (fines and penalties) the **Insurer** will indemnify an **Insured Person** for **Penalties** arising out of any **Claim**, the subject of cover under insuring clauses 1.1, and 1.2.

2. Deductibles, aggregate limit and sub-limits for insuring clauses

2.1 The total amount payable in respect of all claims and losses under all Insuring Clauses and/or the Extensions of this **Policy** shall not in the aggregate exceed the limit of aggregate liability as stated in Item 5 of the Schedule.

2.2 If in respect of any one or more Insuring Clauses or Extensions a sub-limit is shown in Item 6 of the Schedule then the total amount payable by the **Insurer** under the relevant Insuring Clause or Extension shall not in aggregate exceed such sub-limit. The sub-limit forms part of and is not in addition to the limit of aggregate liability shown in Item 5 of the Schedule.

2.3 If in respect of any one or more Insuring Clauses or Extensions a deductible is shown in Item 7 of the Schedule then the **Insurer** shall only be liable for amounts in excess of the deductible.

- 2.4 Where the same **Wrongful Act** or **Trustee Responsibility Breach** results in more than one **Claim** being made against the **Insured Person** or **Corporation** then only one deductible shall apply to such **Claims** covered by this **Policy**. In the event of a **Claim** being based on separate, different or additional **Wrongful Acts** or **Trustee Responsibility Breach**, then the relevant deductible shall apply in respect of each **Wrongful Act** or **Trustee Responsibility Breach**.
- 2.5 Any **Loss** arising out of all interrelated **Wrongful Acts** of any **Insured Person** shall be deemed one **Loss** and such **Loss** shall be deemed to have originated in the earliest **Period of Insurance** in which a **Claim** is made against any **Insured Person** by reason of any **Wrongful Act**.

- (1) the reinstatement does not apply to
- (a) any existing **Claim**
 - (b) **Claims** relating to acts, errors, omissions or wrongful acts already notified to the **Insurer** or any other insurer
 - (c) **Claims** arising from **Known Circumstances**
 - (d) **Insuring Clauses** 1.3 (*Corporation Liability Cover*); 1.4 (*Employment Practices Cover*); 1.5 (*Superannuation Trustees Liability Cover*); 1.6 (*Corporation Crisis Cover*) and 1.7 (*Fines & Penalties Cover*)
- (2) if the **Insured Person** has extra insurance in excess of this **Policy**, then the reinstatement shall not apply until the extra insurance has been exhausted;
- (3) the reinstatement of the limit of liability applies to **Insuring Clauses** 1.1 (*Directors & Officers Liability Cover*) and 1.2 (*Corporate Reimbursement Cover*).

3. Extensions

Automatic Extensions

3.1 Advancement of Defence Costs

If the **Insurer** elects not to take over and conduct the defence or settlement of any **Claim** the **Insurer** will pay all reasonable **Defence Costs** associated with that **Claim** as and when they are incurred provided that:

- (1) The **Insurer** has not denied indemnity for the **Claim**; and
- (2) The written consent of the **Insurer** is obtained prior to the **Insured Person** and/ or **Corporation** incurring such **Defence Costs** (such consent not to be unreasonably withheld).

The **Insurer** reserves the right to recover any **Defence Costs** paid under this extension from the **Insured Person** and/ or the **Corporation** severally according to their respective interests, in the event and to the extent that it is subsequently established by judgment or other final adjudication, that they were not entitled to indemnity under this **Policy**.

3.2 Reinstatement of Aggregate Limit

Upon the **Insurer** having made **Loss** payments under the **Policy** up to the limit of aggregate liability stated in Item 5 of the Schedule, the limit of aggregate liability shall be reinstated to the same amount, provided always:

3.3 Attendance at Official Investigations or Inquiries

The **Insurer** will pay **Defence Costs** incurred with its prior written consent by or on behalf of an **Insured Person** in attending any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution, where such **Insured Person** is legally compelled by such body or institution to attend such investigation, examination, inquiry or proceeding which is the subject of indemnity under this **Policy**.

3.4 Occupational Health & Safety

(1) Insured Persons Cover

Notwithstanding Exclusion 5.5 (*Insured vs Insured*) and 5.7 (*Bodily Injury*), the **Insurer** will provide indemnity to an **Insured Person** for **Defence Costs** in respect of any **Claim** (other than a civil claim for compensation or a **Claim** otherwise excluded) for breach of occupational health and safety laws.

(2) Corporation Cover - Attendance at Official Investigations or Inquiries in respect of Occupational Health & Safety

Where the **Corporation** is legally compelled, during the **Period of Insurance**, to attend any official investigation, examination, inquiry or other proceedings (other than criminal proceedings) ordered or commissioned by any official body or institution, and which involves an allegation that the **Corporation** has breached occupational health and safety laws, then the **Insurer** will pay on behalf of the **Corporation** the **Defence Costs** (other than for criminal proceedings) reasonably and necessarily incurred, with the **Insurer's** prior written consent.

3.5 Retirement Cover

If the **Corporation** does not renew this **Policy** or does not replace it with any other insurance providing directors and officers liability coverage and does not purchase the Extended Reporting Period pursuant to automatic extension 3.6 then any **Insured Person** who retired from all employment or office prior to expiry of the **Period of Insurance** shall be automatically entitled to a once only extension of this **Policy** for a period of 12 months immediately following expiry of the **Period of Insurance** but only for any **Wrongful Act** committed or alleged to have been committed by them prior to the date of retirement.

Such extension confers no entitlement or benefit on any other **Insured Person** or the **Corporation**.

3.6 Extended Reporting Period

If the **Insurer** refuses upon request to offer any renewal terms and conditions during the **Period of Insurance**, the **Corporation** and any **Insured Person** shall jointly (but not separately) have the right upon payment of an amount equal to 50% of the total expiring annual premium stated in Item 8 of the Schedule to a once only extension of the **Policy** for a further 12 months immediately following the expiry of the **Period of Insurance** but only for any **Wrongful Act** committed or alleged to have been committed or attempted prior to the expiry of the **Period of Insurance**, provided always that the right to this extension is exercised prior to the expiry of the **Period of Insurance**.

3.7 Continuity of Cover

Notwithstanding Exclusion 5.3 (*Known Claims & Circumstances*) of this **Policy**, the **Insurer** will indemnify any **Insured Person** and/or the **Corporation** for any **Claim** otherwise covered by this **Policy**, arising from a **Known Circumstance** if:

- (1) There has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- (2) The **Insurer** was the Directors & Officers Liability insurer of the **Insured Person** and the **Corporation** when the **Insured Person** or the **Corporation** first knew of such **Known Circumstance** (whichever be the earlier); and
- (3) The **Insurer** continued thereafter, without interruption, to be the Directors & Officers Liability insurer of the **Insured Person** and the **Corporation** up until this **Policy** came into effect; and

(4) Had the **Insurer** been notified by the **Insured Person** or **Corporation** of the **Known Circumstance** when the **Insured Person** or **Corporation** first knew of it, the **Insured Person** or **Corporation** would have been relevantly indemnified under the policy in force at that time but is now not entitled to be covered by that **Policy** and the **Insured Person** or **Corporation** would have (but for Clause 5.2 of this **Policy**) otherwise been covered by this **Policy**; and

(5) Neither the **Claim** nor **Known Circumstance** have previously been notified to the **Insurer** or to any other insurer .

If the **Insured Person** or **Corporation** was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuity of Cover extension does not apply to provide indemnity under this **Policy** subject to the provisions of the Insurance Contracts Act 1984.

The limit of liability provided by the **Insurer** under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (2) above or under this **Policy**. The terms of this **Policy** otherwise apply.

There is no indemnification provided pursuant to this clause 3.7 in relation to Optional Extension 4.1 (*Corporation Fidelity Cover*), Insuring Clause 1.6 (*Corporation Crisis Cover*), or Automatic Extension 3.2 (*Reinstatement of Aggregate Limit*).

3.8 Insured vs Insured Cover

The **Insurer** will pay on behalf of an **Insured Person** any **Claim** brought by:

- (1) an **Insured Person** for contribution or indemnity, if the **Claim** results directly from another **Claim** covered by this **Policy**;
- (2) a shareholder of the **Corporation** in his/her/its own right or on behalf of the **Corporation**, provided always that such shareholder:
 - (a) was not an **Insured Person** of the **Corporation** at the time of the **Wrongful Act**;
 - (b) is acting without any direct or indirect solicitation, enticement or cooperation (other than co-operation legally required by any statutory or regulatory authority) from any **Insured Person**.

- (3) any regulatory authority on behalf of the **Corporation**, provided always that such regulatory authority is acting without any direct or indirect solicitation, enticement or cooperation (other than cooperation legally required by any statutory or regulatory authority) from any **Insured Person**.
- (4) any court appointed liquidator, receiver, receiver and manager, official manager, administrator or trustee administering a compromise or scheme of arrangement of the **Corporation**.

Where a conflict arises between this extension and Exclusion 5.5 (Insured v Insured) of this **Policy**, the provisions of this extension shall prevail.

3.9 Current outside Directorships (Non-Profit Organisations)

The **Insurer** will provide indemnity for **Outside Directorships** which an **Insured Person** holds in any **Non-Profit Organisation** at the commencement of or during the **Period of Insurance** at the request of the **Corporation** provided always that:

- (1) such indemnity will not extend to any of the other directors or officers (by whatever name called) of the said **Non-Profit Organisation** who are not also an **Insured Person**;
- (2) no indemnity whatsoever is available to the said **Non-Profit Organisation** under Insuring Clauses 1.2 to 1.7 inclusive;
- (3) for the purpose of applying Extension 3.8 (*Insured vs Insured Cover*) to this cover and for no other purpose, the term "**Corporation**" will be deemed to include the said **Non-Profit Organisation**;
- (4) cover under this extension shall apply in excess of any similar insurance held by said **Non-Profit Organisation**;
cover under this extension shall be noncumulative with any other insurance issued by the **Insurer**.

3.10 Run-off Cover for Subsidiaries

Where an entity ceased to be a **Subsidiary Company** prior to the commencement of the **Period of Insurance**, or ceases to be a **Subsidiary Company** during the **Period of Insurance** the **Insurer** will provide indemnity in respect of an **Insured Person** of such **Subsidiary Company** but only in respect of **Wrongful Acts** preceding the time when such entity ceased to be a **Subsidiary Company**.

3.11 Joint Venture Cover

The **Insurer** will provide indemnity for an **Insured Person** for liability arising from any **Claim** in respect of any **Joint Venture**, provided always that such coverage shall not apply to any **Claim** brought by or on behalf of any **Joint Venture** partner(s) or any vehicle established to conduct, control or manage such **Joint Venture**.

3.12 New Subsidiaries

Where the **Corporation** creates or acquires a **Subsidiary Company** during the **Period of Insurance**, the **Insurer** will provide indemnity in respect of an **Insured Person** of such **Subsidiary Company**, but only in respect of **Wrongful Acts** actually or allegedly committed or attempted from or after the time when such entity becomes a **Subsidiary Company**.

In the case, however, of a **Subsidiary Company** whose consolidated asset value exceeds, as at its last balance date or date of its creation, 20% of the total consolidated asset value of the **Corporation**:

- (1) notification of such **Subsidiary Company** shall be given in writing to the **Insurer** within 60 days after such acquisition or creation; if notification is not given to the **Insurer** within 60 days after the acquisition or creation, cover will cease at 4.00pm 60 days after the acquisition or creation or on expiry of the **Period of Insurance** (whichever be the earlier);
- (2) the **Insurer** may in its discretion, provide cover for such **Subsidiary Company** subject to such additional terms and/or premium.

3.13 Run-Off Cover For Outside Directorships

The **Insurer** will provide indemnity for **Outside Directorships** which an **Insured Person** held in any **Organisation** or **Non-Profit Organisation** and which the **Insured Person** ceased or ceases to hold prior to the commencement of or during the **Period of Insurance**, provided always that:

- (1) the **Wrongful Act** giving rise to a **Claim** occurred before the **Insured Person** ceased holding such position;
- (2) the **Outside Directorship** had previously been or is already covered by the **Insurer** under previous policies or this **Policy**; and
- (3) the provisions under Extension 3.9 (*Current Outside Directorships (Non-Profit Organisations)*) or Extension 4.2 (*Current outside Directorships (other than Non-Profit Organisations)*) of this **Policy** will apply to this run-off cover.

3.14 Preservation of Indemnity

If an **Insured Person** is unable to satisfy a right to indemnity against the **Corporation** to which he or she is entitled in respect of a **Claim**, by reason only of the **Corporation** being placed in liquidation (other than voluntary liquidation) and having insufficient funds available so to indemnify the **Insured Person**, then it is hereby agreed that the **Insurer** shall indemnify the **Insured Person** in accordance with this **Policy** to the extent that the **Insured Person** is unable to satisfy the right to indemnity against the **Corporation**.

The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with the **Insured Person** and shall include the production of documentary evidence of the **Corporation's** assets and liabilities and any official statements issued by the liquidator.

3.15 Estates & Legal Representatives

The estates, heirs or legal representatives of deceased, incompetent or insolvent **Insured Persons** shall be indemnified in like manner to such **Insured Persons** provided always that they shall be subject to all the terms and conditions of this **Policy** insofar as they are applicable.

3.16 Spousal Liability Cover

Where a conflict arises between this extension and Exclusion 5.5 (*Insured vs Insured*) of this **Policy**, the provisions of this extension shall prevail.

The **Insurer** agrees to pay on behalf of the lawful spouse of an **Insured Person** all **Loss** in respect of a **Wrongful Act** by the **Insured Person**. Provided always that the **Insurer** shall only indemnify the spouse for **Loss** arising from a **Claim** which:

- (1) is made against the spouse only because he or she is the lawful spouse of the **Insured Person**; and
- (2) relates to property either jointly held by the **Insured Person** and his or her lawful spouse, or transferred by that **Insured Person** to his or her lawful spouse for legitimate purposes only.

4. Optional Extensions

Where indemnity is provided under these extensions it shall be indicated either in Item 9 of the Schedule or by subsequent endorsement to this **Policy**.

The following Optional Extensions shall not operate to increase the **Insurer's** limit of aggregate liability as stated in Item 5 of the Schedule.

The **Insurer** reserves the right to offer any of the following extensions and to impose any special conditions or charge any additional premium as it may require.

4.1 Corporation Fidelity Cover (Non Manifest Intent Wording)

The **Insurer** will reimburse the **Corporation** for any **Fidelity Loss** it sustains during the **Policy Period** where such **Fidelity Loss**:

- (1) is sustained by reason of any dishonest or fraudulent acts committed by an **Insured Person**; and
- (2) is first discovered by the **Corporation** during the **Period of Insurance**; and
- (3) of which the **Insurer** is notified during the **Period of Insurance**.

The deductible applies to each and every **Fidelity Loss** resulting from each separate dishonest, fraudulent, malicious or illegal act or omission committed by an **Insured Person**.

The **Corporation** and/or **Insured Person** shall give written notice including affirmative proof of any **Fidelity Loss** with full particulars to the **Insurer** of any **Fidelity Loss** within the **Policy Period**.

The **Corporation** shall bear the costs and expenses of establishing the nature and extent of the **Fidelity Loss**. The **Insurer** will be under no obligation to provide indemnity until it is satisfied that such **Fidelity Loss** has in fact been sustained.

4.2 Current Outside Directorships (Other than Non-Profit Organisations)

The **Insurer** will provide indemnity for **Outside Directorships** which an **Insured Person** holds at the commencement of the **Period of Insurance** in any **Organisation** stated in Item 9 of the schedule, provided always that the provisions under Extension 3.9 (*Current Outside Directorships (Non-Profit Organisations)*) will apply to this extension save for the change in reference from **Non-Profit Organisation** to **Organisation**.

However, cover is automatically available for **Outside Directorships** entered into during the currency of this **Policy** for a period of 60 days from the commencement of appointment of the **Outside Directorship** or expiry of the **Period of Insurance** (whichever be the earlier)

For cover beyond such period, notification of the appointment is to be given in writing to the **Insurer**, which has the right to ask for additional information and to charge an additional premium.

If notification is not given to the **Insurer** and if any additional information and/or additional premium as requested by the **Insurer** is not provided cover will cease at 4.00 p.m. 60 days after the appointment or on expiry of the **Period of Insurance** whichever be the earlier.

4.3 USA & Canadian Jurisdiction

Notwithstanding Condition 6.16 (*Territory & Jurisdiction*), the **Insurer** will provide indemnity for an **Insured Person** for liability in respect to any **Claim** first brought against an **Insured Person** in a court of law in the United States of America or Canada or their Territories or Protectorates, or brought in a court outside those countries or territories to enforce judgement handed down in a court within those countries or territories whether by way or reciprocal agreement or otherwise. Provided always that such indemnity shall not apply to any **Claim** or **Loss**:

- (1) arising from or based upon any actual or alleged violation of the Securities Act 1933, the Securities Exchange Act 1934, any rules or regulations adopted thereunder, any like federal, state or provincial statute in the United States of America or Canada, regulating securities similar to the foregoing, any rules or regulations adopted pursuant thereto, or as they may be amended or any other state, provincial or common law of the United States of America or Canada relating to securities;
- (2) arising from or based upon any provisions of the Employee Retirement Income Security Act 1974 and all amendments thereto and regulations concerning pension, profits sharing or employee benefit programmes arising under federal, state, local laws or common law or which relate in any way thereto;
- (3) arising from or based upon any actions or proceedings or developments thereof arising directly or indirectly from the Anti-Trust Laws of the United States of America or Canada;

(4) arising out of the enforcement of judgements, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates with respect to Insuring Clauses 1.4, 1.5 and 1.6 and/or Optional Extension 4.4;

(5) which would involve a payment under Extension 3.2 (*Reinstatement of Aggregate Limit*).

4.4 Pre Acquisition Liability

Notwithstanding the proviso to Clause 7.22 (*Subsidiary Company*) of this **Policy**, the **Insurer** will indemnify an **Insured Person** of any **Subsidiary Company** stated in Item 9 of the Schedule for any **Wrongful Act** preceding the acquisition of that **Subsidiary Company** by the **Corporation**.

4.5 Pollution Defence Costs

Notwithstanding Exclusion 5.9(1) (*Pollution*), the **Insurer** will indemnify an **Insured Person** for **Defence Costs** incurred in respect of any **Wrongful Act** resulting in **Loss** arising out of the discharge, dispersal, release or escape of pollutants. The maximum payment under this extension shall not exceed \$1 million in the aggregate. Cover is not provided for **Wrongful Acts** occurring in the United States of America, the Dominion of Canada or their Territories or Protectorates.

4.6 Multi-Year Run-Off after Merger or Consolidation

If the **Corporation** merges or is consolidated with or becomes the **Subsidiary Company** of another company, or sells all or substantially all its assets to another entity, the **Corporation** and any **Insured Person** shall have the option to extend the **Period of Insurance** up to 7 years immediately following the expiry of the **Period of Insurance** but only for any **Wrongful Act** committed or alleged to have been committed or attempted prior to the date of such sale, provided always that the right of the extension is exercised within 30 days of the expiry date of the **Period of Insurance**.

In the event this optional extension is exercised, the **Corporation** and any **Insured Person** shall not be entitled to any further extension beyond the **Period of Insurance** under section 3.6 (*Extended Reporting Period*) of this **Policy**.

5. Exclusions

This **Policy** does not provide an indemnity for any **Loss** arising out of any **Claim**, or for **Defence Costs** incurred pursuant to an inquiry covered under this **Policy**, or for any **Crisis Loss** or **Fidelity Loss** or for any payment under any extension:

5.1 Dishonesty & Fraud – Directors & Officers

Brought about by, contributed to by or which involves:

- (1) A wilful breach of duty, the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of such **Insured Person**; and/or
- (2) Such **Insured Person** having improperly benefited in fact from securities transactions as a result of information that was not available to other sellers and/or purchasers of such securities; and/or
- (3) Such **Insured Person** having gained in fact any personal advantage to which he/she was not legally entitled.

However, this exclusion shall only apply to the extent that the subject conduct has been established by an express admission, court judgment or other final adjudication.

5.2 Dishonesty & Fraud – Corporation

Brought about by, contributed to by or which involves:

- (1) A wilful breach of duty, the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of such **Corporation**; and/or
- (2) Such **Corporation** having improperly benefited in fact from securities transactions as a result of information that was not available to other sellers and/or purchasers of such securities; and/or
- (3) Such **Corporation** having gained in fact any personal advantage to which it was not legally entitled.

However, this exclusion shall only apply to the extent that the subject conduct has been established by an express admission, court judgment or other final adjudication.

This exclusion shall not apply to the extent that indemnification is provided for under Optional Extension 4.1 (*Corporation Fidelity Cover*).

5.3 Known Claims & Circumstances

- (1) known as at the inception date of this **Policy**; or
- (2) arising from a **Known Circumstance**
- (3) directly or indirectly based upon, or attributable to, or in consequence of any such **Known Circumstance**.
- (4) disclosed in the proposal form or arising from facts or circumstances disclosed in the proposal form.

5.4 Breach of Professional Duty

arising from:

- (1) the rendering or failure to render professional services and/or professional advice; or
- (2) a breach or alleged breach of any contract for the provision of professional services and/or professional advice.

5.5 Insured vs Insured

brought by or on behalf of the **Corporation** against any **Insured Person** or their estates, heirs, representatives, successors or assigns or brought by any **Insured Person** against any other **Insured Person** or the **Corporation**.

5.6 Prospectus Liability

brought about by, contributed to or which involves the issue, sale, purchase or transfer of securities of the **Corporation** or the making of any representation for or in connection with such securities.

5.7 Bodily Injury & Property Damage

arising from:

- (1) bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person; or
- (2) destruction of or damage to tangible property (including the loss of use thereof).

5.8 Fines and Penalties

arising from or by reason of or directly or indirectly caused by or arising from fines and penalties imposed by law, punitive, exemplary or aggravated or multiple damages, income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty.

5.9 Pollution, Nuclear Risks, War & Terrorism

arising directly or indirectly from or caused by or contributed to by, or happening through or in connection with:

- (1) pollution or contamination howsoever and wheresoever occurring. For the purpose of this **Policy**, the term Pollution shall have the meaning ascribed to it in the Protection of the Environment Operations Act 1997 No 156 (NSW).
- (2) atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
 - (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
 - (b) the use, handling or transportation of radioactive materials; or
 - (c) the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion. Provided always that this Exclusion 5.9(2) shall not apply to any **Claim** arising from radio-isotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits; or
- (3) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority, except to the extent that such an order arises as a result of any **Wrongful Act** or **Trustee Responsibility Breach** committed by any **Insured Person** or the **Corporation**.
- (4) (a) any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense.
(b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of Terrorism.

Terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any

nation 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) de jure or de facto, and which:

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

5.10 Asbestos

which would not have arisen but for the existence of asbestos.

5.11 Additional Exclusions Applicable to Insuring Clause 1.3 (Corporation Liability Cover) and Insurance Clause 1.5 (Superannuation Trustees Liability Cover)

For any **Loss** arising out of any **Claim** based upon, arising from or in consequence of the failure of the **Corporation** to pay into, or collect contributions for any superannuation or pension fund.

5.12 Additional Exclusions Applicable to Insuring Clause 1.3 (Corporation Liability Cover)

For any **Loss** arising out of any **Claim**:

(1) Contractual Liability

based upon, arising from or in consequence of any actual or alleged liability of the **Corporation** for or in respect of any written or verbal contract or agreement. However, this exclusion does not apply to a contractual obligation of the **Corporation** to indemnify an **Insured Person** against a **Loss** for which the **Insurer** has provided cover under Insuring Clause 1.2 (*Corporation Reimbursement Cover*).

(2) Intellectual Property Rights

based upon, arising from or in consequence of any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

(3) Trade Practices

based upon, arising from or in consequence of any actual or alleged violation of the Trade Practices Act 1974 or any State Fair Trading Acts or similar legislation in any other jurisdiction.

5.13 Additional Exclusions applying to Insuring Clause 1.4 (Employment Practices Liability Cover) and Extension 3.8(1) (Insured vs Insured Cover).

- (1) For or in respect of:
 - (a) a contract of employment alleged to be unfair;
 - (b) The seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.
- (2) in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation.
- (3) for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Corporation**.
- (4) brought about by, contributed to by or which involves industrial disputes (whether between the **Corporation** or the **Insured Persons** or between employees or their union or generally), strike, picket, lockout, go slow or work to rule.

5.14 Additional Exclusions Applicable to Optional Extension 4.1 (Corporation Fidelity Cover)

For or in respect of:

- (1) any **Fidelity Loss** sustained outside of Australia or new Zealand or any loss arising out of, based upon, in consequence of or attributable to any loss sustained outside of Australia or new Zealand.
- (2) any **Fidelity Loss**, the existence of which, has only been provided by profit and loss figures or by inventory calculations (including stock-takes).
- (3) any direct, indirect or consequential loss of income realised or not realised by the **Corporation**.
- (4) any costs incurred by the **Corporation** in re-writing, amending or re-installing the **Corporation's** computer programs or systems.
- (5) any consequential loss arising from any dishonest, fraudulent, malicious, illegal act or omission on the part of any **Insured Person**.
- (6) any **Fidelity Loss** caused by or contributed to by an **Insured Person** who was not employed with the **Corporation** when the act or omission which caused or contributed to the loss occurred.

- (7) any **Fidelity Loss** caused by or contributed to by Directors, Consultants, Independent Contractors, Secondees or Agents of the **Corporation** or their respective employees (including the employees of labour hire agencies).
- (8) any loss arising from default under a loan or any type of credit offered to or by the **Corporation**.
- (9) any **Fidelity Loss** directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which an **Insured Person** had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent such dishonest, fraudulent, criminal or malicious acts or omissions or any loss arising therefrom.
- (10) any **Fidelity Loss** incurred by or on behalf of any **Insured Person** who committed or condoned any such dishonest, fraudulent, criminal or malicious acts or omissions.
- (11) any **Fidelity Loss** first discovered prior to the commencement of the **Period of Insurance** or first discovered after the expiration of the **Period of Insurance**.
- (12) any **Fidelity Loss** based upon, arising from or in consequence of any dishonest, fraudulent, malicious or illegal act or omission by any shareholder who at the time of committing such acts had direct or indirect ownership of or control over more than 5% of the voting hare capital of the **Corporation** or any **Subsidiary Company**.
- (13) any **Fidelity Loss** based upon, arising from or in consequence of the voluntary giving or surrendering of money, negotiable instruments, bearer bonds or coupons, stamps bank or currency notes unless such loss is sustained by reason of any dishonest, fraudulent, malicious or illegal act or omission of any **Insured Person**.
- (14) any loss based upon, arising from or in consequence of the dissemination of or accessing any confidential information including but not limited to patents, trademarks, copyrights, trade secrets, computer programs, or customer information.
- (15) any loss based upon, arising from or in consequence of any kidnap, ransom or extortion.

5.15 Retroactive Date

Where a Retroactive Date is specified in the Schedule, this **Policy** only provides cover in respect of **Wrongful Acts, Employment Practice Breach, Superannuation Trustee Responsibility Breach, and Fidelity Loss** occurring after the Retroactive Date.

6. General conditions

6.1 Authorisation Clause

By acceptance of this **Policy**, the **Corporation** named in Item 1 of the Schedule agrees to act on behalf of the **Insured Persons** with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this **Policy** and the acceptance of endorsements or other notice provided for in this **Policy** and the **Insured Persons** and each of them agree that the **Corporation** shall act on their behalf.

6.2 Severability & Non Imputation

For the sake of determining cover under this **Policy**:

- (1) the written proposal shall be construed to be a separate application for cover by the **Corporation** and by each of the **Insured Persons** and no statement or representation in or with respect to the proposal by an **Insured Person** shall be imputed to any other **Insured Person**.
- (2) this **Policy** shall, subject to General Condition 6.9 (*Non-Accumulation*), be construed to be a separate **Policy** between the **Insurer** and each **Insured Person** and no breach of any term or condition of this **Policy** or other misconduct by any **Insured Person** shall be imputed to any other **Insured Person**.
- (3) No fact or knowledge possessed by one **Insured Person** shall be imputed to any other **Insured Person**.
- (4) Any fact or knowledge possessed by any past or present director, chief executive officer, chief operating officer or chief financial officer shall be imputed to the **Corporation**.

6.3 Merger or Consolidation

Where the **Corporation** merges or is consolidated with or becomes the **Subsidiary Company** of another company or entity during the **Period of Insurance**, the **Insurer** will continue to provide indemnity in respect of the **Corporation**, its **Subsidiary Companies** and their **Insured Persons**, but only in respect of **Wrongful Acts** preceding the time of such merger, consolidation or acquisition.

Any indemnification provided under this clause 6.3 does not apply to Insuring Clause 1.6 (*Corporation Crisis Cover*) or Optional Extension 4.1 (*Corporate Fidelity Cover*).

6.4 Claims Co-operation

The **Insured Persons** and **Corporation** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss**, **Fidelity Loss** or **Crisis Loss** hereunder, and shall immediately give all such information and assistance to the **Insurer** as it may reasonably require to enable it to investigate and to defend the **Claim** and/or to enable the **Insurer** to determine its liability under this **Policy**.

The **Insurer** may, on request from the **Insured Persons** and **Corporation** for indemnity under this **Policy**, take whatever action that it considers appropriate to protect the **Insured Persons'** or **Corporation's** position in respect of the **Claim** and such action by the **Insurer** shall not be regarded as in any way prejudicing its position under this **Policy** and no admission of the **Insured Persons'** or **Corporation's** entitlement to indemnity under this **Policy** shall be implied.

6.5 Allocation

If a **Claim/Loss/Fidelity Loss/Crisis Loss** is covered only partly by this **Policy**, and the parties are unable to agree upon an allocation between insured and uninsured portions, the allocation shall be referred for determination to a Queen's Counsel or Senior Counsel (to be agreed upon or in default of agreement to be nominated by the Chair or President of the local Bar Council) whose determination shall be binding upon the parties and whose fee shall for the purpose of this **Policy** be regarded as part of the **Defence Costs**. The allocation shall apply also to payments made before the determination.

6.6 Court Jurisdiction

It is further understood that this **Policy** shall be governed by the law of the State or Territory where this **Policy** was issued and whose courts shall have jurisdiction in any dispute arising under or in connection with or in respect of the provisions of indemnity under this **Policy**. For the purpose of this condition the place of issue stated in Item 13 of the Schedule shall be conclusive.

6.7 Investigatory Costs and Payments

Any costs incurred by the **Insurer** in investigating any fact, situation or circumstance which may give rise to a **Claim** shall be deemed for all purposes of the **Policy** to be **Defence Costs** incurred under the **Policy**.

Any amount paid by the **Insurer** in settlement of a dispute which may otherwise become a **Claim**, shall be deemed for all purposes of the **Policy** to be a **Loss** incurred under the **Policy**.

6.8 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

6.9 Non-Accumulation

The inclusion in this **Policy** of more than one **Insured Person** and/or **Corporation** shall not operate to increase the **Insurer's** limit of aggregate liability stated in Item 5 of the Schedule.

6.10 Notice

Any notice required to be given under this **Policy** to the **Insurer** shall be validly and lawfully given if it is given to the **Insurer** in writing at the address or to the facsimile number stated in Item 15 of the Schedule.

6.11 Confidentiality

Neither an **Insured Person** nor the **Corporation** shall disclose the nature of the liabilities covered by this **Policy** nor the premium specified in the **Policy**, unless required by law.

6.12 Gender & Number

Except where the context otherwise requires it, words importing a gender include every other gender, words in the singular shall include the plural and words in the plural shall include the singular.

6.13 Senior Counsel Clause

Neither an **Insured Person** or **Corporation** or the **Insurer** shall be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (mutually agreed upon by the **Insured Person** or **Corporation** and the **Insurer** or in default of such agreement, selected by the Chairman or President of the local Bar Council) shall advise that such proceedings should be contested. In formulating his or her advice, Counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of successfully defending the action.

The costs of such Counsel's opinion shall, for the purpose of this **Policy**, be regarded as part of the **Defence Costs**. In the event that Counsel advises that, having regard to all the circumstances, the matter should not be contested but should be settled, providing settlement can be achieved within certain limits which, in Counsel's opinion, are reasonable, then the **Insured Person** and **Corporation** shall not object to any such settlement and shall cooperate with the **Insurer** to effect such settlement in accordance with this **Policy**.

6.14 Settlement Procedure

Subject otherwise to the provisions of the Insurance Contracts Act 1984 the **Insured Persons** and **Corporation** shall, as a condition precedent to the right to be indemnified under this **Policy**, not admit liability for or settle any **Claim** or incur any costs or expenses in connection therewith or enter into settlement without the written consent of the **Insurer** who shall be entitled to at any time to take over and conduct in the name of the **Insured Person** or **Corporation** the defence or settlement of any **Claim**. However, if the **Insured Person** or **Corporation** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to contest or continue any legal proceedings in connection therewith, the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred up to the date of such refusal.

6.15 Subrogation

In the event of any payment by the **Insurer** for a **Loss**, **Fidelity Loss**, or **Crisis Loss** under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment of all rights of an **Insured Person** and/or **Corporation** to recovery thereof and the **Insured Person** and/or **Corporation** shall execute all papers required and do everything that may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Person** and/or **Corporation** except that the right of subrogation under Insuring Clause 1.2 (*Corporate Reimbursement Cover*) and Insuring Clause 1.4 (*Employment Practices Liability (Entity & Insured Persons) Cover*) of this **Policy** is waived against:

- (1) the **Corporation** unless indemnity is granted under Extension 3.14 (*Preservation of Indemnity*) of this **Policy**;
- (2) any **Insured Person** to whom protection is afforded under this **Policy** unless such **Loss** arose from dishonest, fraudulent or wilful misconduct of that **Insured Person**.

Provided always that:

- (a) if such **Insured Person** and/or **Corporation** is protected from such **Loss**, **Fidelity Loss** or **Crisis Loss** by any other collectable **Policy** of insurance, the right of subrogation is not waived to the extent and up to the amount of such other **Policy**;
- (b) the **Insurer** does not waive any right of recovery of any deductible stated in Item 7 of the Schedule.

6.16 Territory and Jurisdiction

- (1) The indemnity provided under Insuring Clause 1.1 (*Directors and Officers Liability Cover*), Insuring Clause 1.2 (*Corporate Reimbursement Cover*), Insuring Clause 1.3 (*Corporation Liability Cover*), Insuring Clause 1.4 (*Employment Practices Liability Cover*), Insuring Clause 1.6 (*Crisis Loss*) and Insuring Clause 1.7 (*Fines & Penalties*) only of this **Policy** extends to **Wrongful Acts** occurring anywhere in the world.
- (2) The indemnity provided under Insurance clause 1.5 (*Superannuation Trustees Liability Cover*) of this **Policy** extends to **Trustee Responsibility Breach** occurring anywhere in the world.
- (3) The indemnity provided under Insuring 1.1 (*Directors and Officers Liability Cover*), Insuring Clause 1.2 (*Corporate Reimbursement Cover*), Insuring Clause 1.3 (*Corporation Liability Cover with OH&S Defence Costs*), Insuring Clause 1.4 (*Employment Practices Liability Cover*), Insuring Clause 1.5 (*Superannuation Trustees Liability Cover*) and Insuring Clause 1.6 (*Crisis Loss*) and Insuring Clause 1.7 (*Fines and Penalties*) only of this **Policy** extends to **Claims** made, or determined anywhere in the world, except:
 - (a) actions brought in or determined pursuant to the law of, the United States of America or the Dominion of Canada, or their Territories or Protectorates; or
 - (b) any **Claim** arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates.
- (4) The indemnity provided under Optional Extension 4.1 (*Corporation Fidelity Cover*) is restricted to losses occurring and notified in Australia and New Zealand. The **Insurer** is not liable, under Optional Extension 4.1 (*Corporation Fidelity Cover*), for any loss sustained outside of Australia or New Zealand.

6.17 Other Insurance

Subject to the Insurance Contracts Act 1984, where an **Insured Person** and/or **Corporation** is entitled to indemnity pursuant to a separate **Policy** of insurance more specifically providing cover in respect of the **Claim**, this **Policy** does not respond except to the extent that the **Insured Person's** or **Corporation's** liability for any **Claim** exceeds the amount of cover under such other **Policy**.

6.18 Canceling the Policy

(1) The Corporation Can Cancel the Policy

The **Corporation** is entitled to cancel this **Policy** from the date the **Insurer** receives a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms. The **Insurer** will be entitled to retain premium for pro-rata "time on risk" plus an administration charge calculated at 12.5% of the pro rata return premium, subject to a minimum administration charge of \$250 plus GST. (Note stamp duty for mid term cancellation is not refundable in some states).

(2) The Insurer can cancel the Policy

- (a) Under Section 60 of the Insurance Contracts Act 1984, the **Insurer** may cancel this **Policy** at any time by giving notice in writing to the **Corporation** of the date from which cancellation is to take effect where the **Corporation** has:
 - (i) Failed to comply with the duty of utmost good faith; or
 - (ii) Failed to comply with the duty of disclosure at the time when this **Policy** was entered into, varied, altered, or renewed; or
 - (iii) made a misrepresentation to the **Insurer** during the negotiations for this **Policy**, but before the **Insurer** agreed to issue this **Policy**; or
 - (iv) failed to comply with a provision of the **Policy**; or
 - (v) failed to pay the premium for this **Policy**; or
 - (vi) made a fraudulent claim under this **Policy**; or any other contract of insurance (whether with the **Insurer** or another insurer) that provided cover during any part of the **Period of Insurance** of this **Policy**; or
 - (vii) failed to comply with a requirement in this **Policy** to notify of an act or omission which occurred after this **Policy** was entered into; or
 - (viii) failed to notify Insurer of any specific act or omission or such notification as required under the terms of this insurance **Policy**.

- (b) Under Section 60 of the Insurance Contracts Act 1984, the **Insurer** may cancel this **Policy** at any time where:
- (i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
 - (ii) it is an interim contract of general insurance.
- (c) After cancellation pursuant to Clause 6.18, the **Insurer** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless the **Corporation** or an **Insured Person** has made a fraudulent claim under the **Policy**.

6.19 Legal Enforceability

For this **Policy** to be legally enforceable, it must include a schedule that has been appropriately signed by an officer of the **Insurer**.

6.20 Goods and Services Tax

Where the **Insurer** makes a payment under this **Policy** for the acquisition of goods, services or other supply the **Insurer** will reduce the amount of the payment by the amount of any input tax credit the **Corporation** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made. Where the **Insurer** makes a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, the **Insurer** will reduce the amount of payment by the amount of any input tax credit that the **Corporation** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

7. Definitions

Whenever appearing in this **Policy** in bold type and with a Capital Letter the following terms shall be interpreted only in the manner described below. These words may appear without bold type in endorsements on the **Policy** schedule.

7.1 Claim

Claim with respect to:

- (1) Insuring Clause 1.1 (*Directors and officers Liability Cover*), Insuring Clause 1.2 (*Corporation Reimbursement Cover*), and Insuring Clause 1.5 (*Superannuation Trustees Liability Cover for Insured Persons*) means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim alleging any **Wrongful Act** or **Trustee Responsibility Breach** as applicable which is both issued against and served upon any **Insured Person** who is entitled to indemnity under this **Policy**.
- (2) Insuring Clause 1.3 (*Corporation Liability Cover*) means any writ, summons application or other originating legal civil proceeding (not a criminal proceeding) alleging a **Wrongful Act** which is both issued against and served on the **Corporation** entitled to indemnity under this **Policy**.
- (3) Insuring Clause 1.4 (*Employment Practices Liability Cover*) means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim alleging an **Employment Practice Breach** which is both issued against and served upon any **Insured Person** or **Corporation** entitled to indemnity under this **Policy**.

7.2 Corporation

Corporation means the **Corporation** stated in Item 1 of the Schedule and shall be deemed to include all its **Subsidiary Companies**.

7.3 Crisis

Crisis means any one of the following unforeseen events which in the reasonable professional opinion of the managing director or chief executive officer of the **Corporation** has the potential to cause imminent **Operational Loss** to the **Corporation** if left unmanaged:

- (1) the loss of the **Corporation's** intellectual property rights including patents, trademarks, or copyrights that were previously acquired by the **Corporation**;

- (2) the loss of a major customer or major contract of the **Corporation**;
- (3) the recall of any product which has been manufactured, produced, packaged or distributed by the **Corporation** due to its potential to cause property damage or bodily injury to others;
- (4) any act on the premises of the **Corporation** that causes death or injury of an **Insured Person** or causes emotional distress to an **Insured Person** or customers of the **Corporation** from witnessing such an act;
- (5) any destruction or damage to tangible property belonging to the **Corporation** not caused by a natural disaster.

7.4 Crisis Loss

Crisis Loss means the reasonable fees, costs and expenses of a crisis management consultant retained by the **Corporation** to minimise the effects of a **Crisis**, but only for a 30 day period immediately following the day on which the **Crisis** first occurs.

7.5 Defence Costs

Defence Costs means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any **Insured Person**) incurred with the prior written consent of the **Insurer** in defending any **Claim** or incurred in attending an inquiry covered by this **Policy**.

7.6 Employment Practice Breach

Employment Practice Breach means any:

- (1) discrimination against any **Insured Person**, or applicant for employment whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- (2) wrongful dismissal of any **Insured Person**;
- (3) workplace harassment (whether sexual or otherwise) of an **Insured Person**;
- (4) breach of an implied term of an oral or written employment contract;
- (5) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Insured Person**;
- (6) wrongful refusal to employ an applicant;
- (7) defamation arising from employment related matters;
- (8) misleading misrepresentation or advertising as to the terms and conditions of employment; or

- (9) denial of natural justice to an **Insured Person** concerning employment.

Provided always that:

a **Claim** by reason of an **Employment Practice Breach** is subject to the deductible specified under Item 7 of the Schedule.

For the purpose of the definition of "Employment Practice Breach" only "Insured Person" shall include principals, partners, voluntary workers, contract or temporary workers.

7.7 Fidelity Loss

Fidelity Loss means direct financial loss caused by the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes:

- (1) owned by the **Corporation**; or
- (2) in the care, custody or control of the **Corporation** and for which the **Corporation** is legally liable.

Fidelity Loss does not include wages, salaries, or other remuneration benefits of **Insured Persons** incurred by the **Corporation**.

7.8 Indemnity Period

Indemnity Period means the **Period of Insurance** and the Extended Reporting Period if Extension 3.6 (*Extended Reporting Period*) is in force.

7.9 Insured Person

Insured Person means:

- (1) any natural person who was or now is or may hereafter become a director, secretary, executive officer or employee of the **Corporation** by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position;
- (2) any natural person who by virtue of any applicable legislation, is deemed to be a director, secretary, executive officer or employee of the **Corporation**.

Insured Person does not mean a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of the **Corporation** or any employee of such person.

7.10 Insurer

Insurer means CGU Professional Risks Insurance, a division of CGU Insurance Limited ABN 27 004 478 371.

7.11 Joint Venture

Joint Venture means any unincorporated enterprise undertaken jointly by the **Corporation** with a third party or parties.

7.12 Known Circumstance

Known Circumstance means any fact, situation or circumstance which:

- (1) any **Insured Person** was aware of prior to this **Policy** inception, or
- (2) a reasonable **Insured Person** would have considered at any time prior to the **Period of Insurance**

might result in someone making an allegation against an **Insured Person** in respect of a **Loss** that might be covered under this **Policy**.

7.13 Loss

Loss means **Defence Costs** and any other amount payable in respect of a **Claim** including damages, judgments, settlements and interest.

In respect of Insuring Clause 1.4 (*Employment Practices Liability Cover*) **Loss** includes back-pay where reinstatement of an employee is ordered by a Court but excludes any amount which the **Corporation** or **Insured Person** is or was required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.

Loss does not include **Fidelity Loss** or **Crisis Loss**.

7.14 Non-Profit Organisation

Non-Profit Organisation means any company, entity, body, committee, council, club, association, trust (other than a **TRUST** as hereinafter defined) or other enterprise whether incorporated or unincorporated that is exempt from the payment of income tax under State or Federal law and is not a **Subsidiary Company**.

7.15 Operational Loss

Operational Loss means a decrease greater than 30% of the total consolidated annual revenues for the most recent financial year end of the **Corporation**.

7.16 Organisation

Organisation means any company, entity, body, committee, council, club, association, trust (other than a **TRUST**) or other enterprise, whether incorporated or unincorporated, provided that it is not a **Subsidiary Company**.

7.17 Outside Directorship

Outside Directorship means the position of director, officer, secretary, trustee or equivalent position held by an **Insured Person** in an **Organisation** or **Non-Profit Organisation** at the request or direction of the **Corporation**.

7.18 Penalties

"**Penalties**" means any monetary sum that an **Insured Person** is ordered to pay by a court

of competent jurisdiction to any **Regulatory Authority** but excluding:

- (1) any amounts payable as compensation;
- (2) any compliance, remedial, reparation or restitution costs;
- (3) any damages, including any exemplary or punitive damages;
- (4) any consequential economic loss;
- (5) any **Defence Costs**;
- (6) any penalty:
 - arising from circumstances where the **Insured Person** knew, or ought reasonably to have known, prior to the **Period of Insurance** that the behaviour complained of was wrongful;
 - attributable to the period after which the **Insured Person** knew or ought reasonably to have known that the behaviour was wrongful;
 - for a breach of any Consumer Protection Act or similar legislation;
 - for any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law and any amendment, consolidation or re-enactment of those sections;
 - for the failure to comply with any lawful consent, demand, determination, memorandum, notice, order, schedule or the like issued under any Act of the Commonwealth of Australia or the States or Territories of the Commonwealth of Australia.

7.19 Period of Insurance

Period of Insurance means the **Period of Insurance** stated in Item 4 of the schedule.

7.20 Policy

Policy means:

- (1) all the terms, conditions, definitions, exclusions and limitations contained herein;
- (2) the schedule;
- (3) any endorsements attaching to and forming part of this **Policy**, either at inception or during the **Indemnity Period**.

7.21 Regulatory Authority

"**Regulatory Authority**" means a person or entity acting pursuant to any Act of the Commonwealth of Australia or the States or Territories of the Commonwealth of Australia for the purposes of enforcement of such Act or any other Act.

7.22 Subsidiary Company

Subsidiary Company means any company or other incorporated entity which at the inception of the **Period of Insurance** by virtue of Australian law was or is, either directly or indirectly a subsidiary of the **Corporation**.

Provided always that the accounts of any **Subsidiary Company** are consolidated into those of the **Corporation** in accordance with the relevant accounting standard.

7.23 Trust

Trust means a trust in respect of a superannuation or pension fund, as specified in Item 11 of the Schedule, administered by the **Trustee** for the benefit of the employees of the **Corporation**.

7.24 Trustee

Trustee means any natural person who was or now is or may hereafter become a trustee of a **Trust**.

7.25 Trustee Responsibility Breach

Trustee Responsibility Breach means any actual or alleged wrongful act or omission committed by a **Trustee** in their or its capacity as a **Trustee** but only in respect of the administration of the **Trust**.

7.26 Wrongful Act

Wrongful Act means any wrongful act or omission committed or allegedly committed as applicable:

- (1) by an **Insured Person** in their capacity as an **Insured Person**;
- (2) by the **Corporation**.

Wrongful Act does not include:

- (3) any **Employment Practice Breach** or any other wrongful act or omission committed or allegedly committed against an **Insured Person** in respect of that **Insured Person's** past, present or prospective employment with the **Corporation**;
- (4) any **Trustee Responsibility Breach**;
- (5) any **Crisis**.

8. The way we handle your personal information

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims. You can choose not to provide this information, however, we may not be able to process your requests.

We may disclose information we hold about you to other insurers, an insurance reference service or as required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisors.

If you wish to update or access the information we hold about you, contact us.

General Insurance Code Of Practice

CGU Insurance proudly supports the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- ◆ to promote better, more informed relations between insurers and their customers;
- ◆ to improve consumer confidence in the general insurance industry;
- ◆ to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- ◆ to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from your nearest CGU office.

Our service commitment

CGU Insurance is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- ◆ one of our products;
- ◆ our service;
- ◆ the service of our authorised representatives, loss adjusters or investigators; or
- ◆ our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Brochures outlining our internal dispute resolution process are available from your nearest CGU Insurance office.

Intermediary Remuneration

CGU Insurance Limited pays remuneration to insurance intermediaries when we issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay your intermediary you should ask your intermediary

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