

Ansvar Management Liability

POLICY WORDING

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About Ansvr

Insurance from one of Australia's specialist insurers

With 60 years of experience in the Australian insurance industry, Ansvr has become a leading specialist provider of insurance and risk management solutions for the Care Services, Community Services (Not for Profits), Education and Learning, Faith Communities, Arts, Culture and Heritage and Commercial Property Owner sectors.

A highly respected and ethical insurer, Ansvr is owned by the Benefact Group, a leading insurer of heritage, religious and charitable organisations in the UK. Established in 1887, the Benefact Group gives all available profits to good causes. In recent years, the Benefact Group has given €100m to good causes and has committed to giving back €250m to good causes by 2025, truly making a real difference to the world we live in.

GIVING BACK

For over 25 years, Ansvr has played a small part in making a positive impact on the world through our Community Education Program (CEP). As part of our mission to give back to the community, Ansvr will continue to donate a percentage of our profits to organisations that provide valuable support to improve and enrich the lives of disadvantaged young Australians, so that they may contribute positively to the community in which they live.

Since starting in 1994, Ansvr's Community Education Program has provided a range of grants contributing over \$15 million to help fund over 100 different charities and not for profit organisations with a focus on supporting the education and life skill development needs of disadvantaged young Australians. Through a program focussed on Empowerment and Education and Outreach and Support, Ansvr has reached and made a genuine difference to the lives of thousands of young Australians in need.

OUR APPROACH

As a sector specialist, Ansvr has developed a deep understanding of clients' needs, the risks and challenges they face and the complex environments in which they operate. We understand that fully protecting our clients requires a holistic approach and that being protected isn't simply about insuring against events that might happen but where possible taking steps to prevent or minimise the impact of those events in the first place.

Ansvr has a dedicated team of risk management specialists that can assist brokers and clients in assessing effectiveness of current approaches to risk management and guide opportunities for improvement.

With our sector expertise and knowledge combined with a flexible underwriting approach, Ansvr offers tailored insurance solutions to provide the right cover to suit the unique needs of clients within our core sectors. We believe however that the real moment of truth is in the way we respond to claims. Ansvr has a dedicated team of claims specialists focused on quickly solving the problems of our clients and going the extra mile to ensure the client is looked after in the best way possible. With a compassionate and strong ethical approach, our claims team is well experienced and knowledgeable in handling both sensitive and intricate claims.

About this insurance policy wording

This insurance policy wording is an important document. You should read it carefully before making a decision to purchase this insurance.

In conjunction with the certificate of insurance and/or The Schedule and any endorsements we issue upon acceptance of your proposal, it provides a full description of the terms, conditions and limitations of the insurance cover.

The financial product offered in the insurance policy wording is provided by Ansvr Insurance Limited.

The Table of Contents provides a summary of the content of the insurance policy wording. The purpose of this insurance policy wording is to assist you to understand your insurance policy and enable you to make an informed choice about your insurance requirements.

You will need to read the entire insurance policy wording, certificate of insurance and/or The Schedule for a full understanding of these terms, conditions and limitations.

This insurance policy wording was prepared in May 2022.

CONTACT US

Ansvr Insurance Limited (Ansvr Insurance), ABN 21 007 216 506, is the issuer of this insurance policy. The registered office of Ansvr Insurance is Level 5, 1 Southbank Boulevard, Southbank, Victoria. The Ansvr Insurance Australian Financial Services Licence number is 237826.

Call us on 1300 650 540, email us at insure@ansvar.com.au or visit us at www.ansvar.com.au

Important Information

CHANGES TO THE INSURANCE POLICY WORDING

Information in this insurance policy wording is subject to change from time to time.

Changes in your insurance policy wording will be communicated to you in several ways and these are:

- if a change will affect you adversely, Ansvr Insurance will issue you with a new insurance policy wording or a supplementary insurance policy wording prior to the renewal of the insurance each year;
- for minor changes which are not materially adverse to you, we will communicate the changes to you in writing at the earliest opportunity;

Information can be obtained by telephoning our toll free number (1300 650 540), calling at one of our offices or visiting our website at www.ansvar.com.au to find out what changes might have occurred;

If changes have occurred, we will be pleased to provide you with a paper copy of them on request.

CODE OF PRACTICE

The General Insurance Code of Practice (the Code) was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.

You can obtain information on the Code and how it assists you by contacting us on 1300 650 540.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Committee please go to the following website insurancecode.org.au

COSTS

The premium payable by you is shown in your certificate of insurance and/or The Schedule . The premium payable will be determined considering factors such as those listed below.

Your premium may alter if you make changes to your insurance cover or your circumstances change during the period of insurance.

The factors used to determine the premium payable under this policy include, but are not limited to:

- the organisational structure of the insured entity and its subsidiaries;
- the nature and age of the operations and any merger/ acquisition history;
- the number of individual insured persons required to be insured;
- the extent of corporate control in the operations;
- the nature and value of assets under management;
- the adequacy of other insurance in place to protect your assets and liabilities;
- the period of insurance (short-term/annual), and extent of retroactive cover required;
- the sums insured or limits of liability per claim or in the aggregate;
- the excess selected;
- past claims, incidents, proceedings and disciplinary history.

The above list of factors is not exhaustive and we may take other factors into consideration when determining the premium payable under this policy.

Premiums and fees are subject to Commonwealth and State taxes and levies which include the Goods and Services Tax and Stamp Duty and all are shown in the certificate of insurance.

The premium is payable either when the product is purchased or by direct bank debit when you elect to pay it monthly. If you elect to pay monthly there is an additional fee. A cancellation fee may apply if you cancel your insurance policy before expiry.

CRITICAL DOCUMENTS

It is important to read/retain the following documents and keep them in a safe and convenient place:

- this document;
- your current certificate of insurance;
- any endorsements.

Remember to regularly review your insurance policy, particularly at renewal to ensure your insurance policy provides the cover that you currently need.

GOODS AND SERVICES TAX (GST)

This insurance policy has provision for payment of Goods and Services Tax:

- by you in relation to premiums
- by us in relation to claims

Important Information

RESOLVING COMPLAINTS AND DISPUTES

Ansvar is committed to resolving any complaints in relation to our products, services or handling of personal information.

Our process has three key stages.

1. Talk to us

Discuss your complaint with us by calling 1300 650 540 or sending an email outlining your concerns to insure@ansvar.com.au and one of our team members will assist you. We will acknowledge receipt of your complaint within one business day. The team member will refer you to a manager if they are unable to resolve the matter for you. If you are not satisfied with the response, please go to step 2.

2. Contact our service centre

You may request a review of your complaint by our Dispute Resolution Committee.

Contact us on 1300 650 540, or by email: insure@ansvar.com.au or post: Ansvar Disputes Resolution GPO Box 1655, Melbourne, Victoria 3001. Our service team will contact you if they require further information and they will provide you with an outcome within 30 calendar days of us receiving notice of the complaint. Please ensure you provide us with your preferred contact details.

3. Refer for external dispute resolution

If we are unable to resolve your complaint you may seek advice from the Australian Financial Complaints Authority (AFCA).

Website: afca.org.au

Phone: 1800 931 678 (free call)

RETROACTIVE LIABILITY

The policy does not provide cover in relation to any loss, crisis loss or claim directly or indirectly arising out of, attributable to or in connection with any wrongful act, employment practice breach or trustee responsibility breach (as such terms are defined in the policy) which occurs prior to the retroactive date as shown in the certificate of insurance and applicable to the insuring clause under which cover would otherwise be available.

SUBROGATION

The policy contains provisions which provide that following any payment under the policy we will be subrogated to your rights to recovery from others in respect of such payment. The provisions also provide that you must do everything reasonably necessary to secure and preserve such rights of subrogation and you must do all things reasonably practicable to avoid or diminish loss covered by the policy. If you fail to do so we may be entitled to refuse or reduce a payment under this policy, but only to the extent that we have been prejudiced.

YOUR DUTY OF DISCLOSURE

Before you enter into an insurance contract, you have a duty of disclosure under the Insurance Contracts Act 1984. If we ask you questions that are relevant to our decision to insure you and on what terms, you must tell us anything that you know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until we agree to insure you.

You have the same duty to disclose these matters to us before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

If you do not tell us something

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

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

YOUR PRIVACY

Ansvar places the highest priority on protecting the privacy of your personal information.

Why we collect personal information

The information we collect is used to assist us to provide our products and services, including to process and settle claims; to manage our relationship with you; and to meet our legislative obligations as an insurer.

If you do not provide the personal information we require, we may not be able to provide you with our products and services.

How we collect personal information

Information is generally collected from you or your insurance broker when you are applying for or enquiring about our insurance products, or when making a claim. We may also collect your personal information from people who are involved in a claim, or assist us in investigating or processing claims.

Who we disclose your personal information to

At times we rely on third party suppliers (agents, lawyers, other insurance companies, assessors, investigators, loss adjusters, market research and mailing houses) to perform specialised activities for us. Your personal information may be provided to them so that they can carry out their agreed activities. They are bound by confidentiality agreements and are prohibited from using the information for any other purpose. These service providers are aware of their obligations under the Privacy Act 1988 (Cth) and the General Insurance Code of Practice.

We are unlikely to provide your personal information to overseas recipients.

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The contract between you and Ansvr Insurance

Definitions applicable to the policy

Certain words and phrases that appear in the **policy** in **bold** have special meanings as set out below.

Where used in the **policy**:

Act of Parliament means any Act of the Parliament of the Commonwealth of Australia or of any the State or Territories of Australia, including any subordinate or delegated legislation or regulation made under and any amendment, consolidation or re-enactment of any of those Acts.

aggregate limit of liability means the maximum amount under each particular **insuring clause** or **automatic extension** as shown in the or as may be expressly stated in the **automatic extension** that **we** are liable to pay in respect of the aggregate of all liability for **loss** and claims the subject of cover under the respective **insuring clause** or **automatic extension**.

aggregate policy limit means the lesser of \$35,000,000 or 1.5 times the **limit of liability** applicable to Insuring clause 2 - Directors and Officers Liability. The **aggregate policy limit** is the maximum amount that **we** will pay under the **policy** in respect of the aggregate of all payments **we** would otherwise be liable to make under the **policy**.

APRA means the Australian Prudential Regulation Authority.

auditor means an authorised **officer** under Commonwealth, State or Territory legislation to conduct a tax audit.

automatic extension means the **automatic extensions** listed on **your certificate of insurance** and applies to an **insuring clause** of this **policy** shown in the **certificate of insurance** with a **limit of liability** and **aggregate limit of liability** of greater than zero. **We** accept no liability under any **insuring clause** or any **automatic extension** which applies to that **insuring clause** where a zero amount or "not taken" is shown in the **limit of liability** and **aggregate limit of liability** section of the **certificate of insurance** for that **insuring clause**.

back-pay means the amount **you** are obliged to pay an **employee** for the period between the time of incorrect termination of the **employee's** employment and the time the **employee** is reinstated or re-employed, following an order of reinstatement or re-employment made upon **you**.

business means the business, activities or services specified in the **certificate of insurance** carried out in **your** operations from Australia.

certificate of insurance means the document so named attaching to the **policy** and any further **certificate of insurance** issued subsequently by **us**, extending or varying the **policy** showing:

- i) the selected **insuring clause/s** selected by **you** for insurance under the **policy**;
- ii) the **excess** applicable to each selected **insuring clause** and **automatic extension** to the selected **insuring clause**;
- iii) any special terms applicable to **your policy**;
- iv) the **limit of liability** and the **aggregate limit of liability** applicable to each **insuring clause**;
- v) the **aggregate policy limit**; and
- vi) the premiums payable for this insurance.

civil or bail bond expenses means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a Court hearing in respect of an **extradition proceeding**.

claim means:

- i) any writ, summons, application cross-claim, counter-claim or other legal or arbitral proceedings or process, or written demand seeking monetary or non-monetary relief and alleging any **wrongful act**, or **employment practice** breach;
- ii) any written notice of any proceedings, **investigation** or inquiry which may give rise to the imposition of a **penalty**;
- iii) any extradition proceeding against an **insured person**;
- ii) any criminal proceeding.

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

client means a customer to whom the insured provide goods or services for a fee or not.

compensation means monies payable or agreed with **our** consent to be paid (including damages) by judgment, award or settlement including all charges, expenses and legal costs recoverable from **you** or an **insured person**. It does not include the costs of complying with any non-monetary relief.

constructive dismissal for the purposes of an **employment practices breach** means requiring an **employee** to cease their employment with **you** because of what you say, do or fail to do.

contract worker means a person engaged by **you** through a labour-hire firm, under an agreement between **you** and the labour-hire firm, to perform duties related to the conduct of **your business**.

crisis means an unforeseen event which in the reasonable opinion of **your** managing director, chief executive officer or equivalent and **us** has the potential to cause **loss** of **your** reputation and/or imminent loss of annual revenue to **your business** in the 12 month period immediately following the event and exceeding 30%

- i) the **loss** of **your** intellectual property rights including existing patents, trademarks, or copyrights;
- ii) the **loss** of a major customer or major contract of **yours** for the supply of goods and/or services;
- iii) the traumatic death or significant impairment of a person on **your** premises causing emotional distress to **insured persons** or **employees** or members of the public having witnessed the injury;
- iv) substantial destruction of or damage to **your** property other than caused by a natural disaster;
- v) the first apparent unauthorised intrusion into the computer facilities of the **insured**;

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crisis means (continued)

- vi) a recall or boycott of any product;
- vii) any criminal or fraud investigation.

Crisis is not an event that affects generally the industry in which the **insured** conducts its **business**.

crisis loss means the reasonable fees, costs and expenses of a crisis management consultant retained by **you** to minimise the effects of a **crisis**, and such costs and expenses recommended by the crisis management consultant, but only for such advice received and steps taken within the 60 day period immediately following the day on which the **crisis** first occurs.

cyber-attack means a set of instructions that are designed to modify, alter, damage, destroy, delete, record or transmit **electronic data** without **your** authorisation including those instructions that are self-replicating or self-propagating and are designed to contaminate other computer programs or electronic data, consume computer resources or usurp the normal operation of internet activities causing undesired program or computer operation.

data means information contained in records or accounts.

defence costs means all reasonable costs and expenses (other than regular or overtime wages, salaries or fees of any **insured person** or **employee**) incurred by **you** or an **insured person** with **our** prior written consent (such consent shall not be unreasonably withheld), for:

- i) legal representation in defending, investigating, attending or monitoring any **claim** or proceedings, investigations, examinations, inquiries and the like;
- ii) any subsequent appeals, together with all reasonable costs of bringing such appeals; or
- iii) legal or professional advice or assistance incurred in the settlement of a **claim**.

deprivation of assets expenses means the payment of the following services, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **insured person** or creating a charge over real property or personal assets of the **insured person** during the **period of insurance**:

- i) housing;
- ii) utilities;
- iii) personal insurances; and
- ii) schooling.

Expenses will be payable after 30 days following the event above for a period of up to six months.

direct financial loss means **loss of money, securities or property** belonging to **you** or in **your** care, custody or control, for which **you** are legally liable.

director means:

- i) any natural person who was, is currently or during the **period of insurance** becomes a **director** of any legal organisation included in the definition of **insured** (by whatever name called) and whether or not such person is validly appointed to occupy or duly authorised to act in such position; and
- ii) any natural person who by virtue of any applicable legislation, is deemed to be acting in such a capacity; but does not include:
 - i) a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of **your organisation**.

discrimination means any actual or alleged breach of applicable State or Federal discrimination laws of Australia.

discovered means when any **director** (who is not in collusion with an **employee** who has committed or is attempting to commit a dishonest act) becomes aware of any facts which would cause a reasonable person to assume that a **direct financial loss** has been incurred, even though the exact amount or details of the **direct financial loss** are not known at the time of discovery. Such discovery constitutes discovery by **you**.

dishonest act means any dishonest, fraudulent, criminal or malicious act committed by an **employee** or **third party** (whether acting alone or in collusion with any other person) with the intent to cause the **insured** to sustain a **loss** or to obtain financial benefit for that **employee** or third party or for any other person or organisation intended by that **employee** or **third party** to receive the financial benefit.

electronic data means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

employee means any person who is or was at the time of an event or circumstance for which cover is provided under this **policy**:

- i) employed by **you** under a contract of service or apprenticeship as a full-time, casual or temporary **employee**;
- ii) under a contract of service or apprenticeship with another employer and is or was seconded to work for **you**;
- iii) under a work experience scheme with **you** and is or was deemed by legislation in respect of work-related accident **compensation** or occupational health and safety to be an **employee of yours** or a worker in relation to **you**.

employment practice breach means any actual or alleged:

- i) wrongful refusal to employ a prospective **employee**;
- ii) misleading conduct or misrepresentation in advertising the terms and conditions of a position of employment with the **insured**;
- iii) wrongful failure to promote, wrongful demotion of, wrongful deprivation of career opportunity of, negligent evaluation of work performance of, negligent reassignment or wrongful disciplinary action against an **employee**;
- iv) wrongful termination of employment of an **employee** including **constructive dismissal**;
- v) retaliatory treatment against an **employee** or a **contract worker** following an exercise of his or her rights and victimisation;
- vi) unlawful workplace harassment of an **employee** or a **contract worker** including racial, religious, sexual and other harassment as prohibited by the applicable laws of Australia or the permitting of a workplace environment which is conducive to harassment;
- vii) unlawful **discrimination** of any kind directed towards an **employee** or a prospective **employee**;
- viii) infliction of emotional distress, anguish or humiliation of any **employee, a contract worker** or a prospective **employee**;
- ix. oral or written publication of material that slanders, defames or libels an **employee, a contract worker** or unlawful interference with privacy; or
- x. denial of natural justice to an **employee** concerning their employment.

For the purpose of this definition only, the term **employee** shall include any officer or **volunteer**.

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endorsement means any document so designated and issued by **us**, that amends the **policy** wording or any details specified in the **certificate of insurance**. An **endorsement** does not affect the **limit of liability**, aggregate **limit of liability** or aggregate **policy limit** or any other term of the **policy**, except to the extent expressly provided in the **endorsement**.

excess means the amount **you** must contribute towards each and every **claim** under the **policy** and shown in the **certificate of insurance** in respect of each **insuring clause** or **automatic extension** (as applicable and if selected by **you**).

extended notification period means the 30 days following immediately after the expiry of the **period of insurance** or such longer period as may apply pursuant to **automatic extensions** 8 or 15 or 26.

extradition proceeding means:

- i) written request for extradition of an **insured person**, a warrant for the arrest of an **insured person** or other proceedings commenced by a writ, complaint, summons or other originating process against an **insured person** under the provisions of the Extradition Act 1988 (Cth) and/or as amended or replaced by any associated regulations; and
- ii) any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth) as amended or replaced; and
- iii) equivalent of the above in any other jurisdiction.

geographic limits means the limits stated in Condition 7 - geographic limits or as otherwise stated in the **policy**.

identity fraud expenses means any reasonable fees, costs and expenses incurred by **you** in establishing that a fraudulent misrepresentation has occurred, where a **third party** first seeks to enforce an agreement against **you** during the **period of insurance**.

insured means **you**, **your** and/or **yours** as defined below.

insured person means any person who is or was::

- i) a **director**; or
- ii) an **officer**; or
- iii) **employee**; or
- ii) a **trustee**.

of the **insured** but only in respect of work performed while such person was a **director**, **officer**, **employee** or trustee of the **insured**

insuring clause means any of Insuring Clauses 1 to 8 of the **policy** provided the **insuring clause** is selected by **you** and shown in the **certificate of insurance** with a **limit of liability** and **aggregate limit of liability** of greater than zero. **We** accept no liability to make any payment under the **policy** pursuant to or under an **insuring clause** if a zero amount or "not taken" is shown in the **limit of liability** and **aggregate limit of liability** section of the **certificate of insurance** for that **insuring clause**.

internet activities means all or any of the following:

- i) use of electronic mail systems by **you** and other persons working on **your** behalf;
- ii) access through **your** network to the world wide web or a public internet site by **you** and other persons working on **your** behalf;
- iii) access to **your** intranet (internal company information and computing resources which is made available through the world wide web) by customers or other persons **you** authorise outside **your organisation**; and
- ii) the operation and maintenance of an internet site owned or operated by **you** or on **your** behalf, but not any third party internet site accessed via links to or from **your** internet site.

investigation means an inquiry, administrative or regulatory authority investigation, examination or hearing commenced by an **official body**:

- i) which the **insured person** is legally compelled to attend; and
- ii) which has as its subject matter the affairs of the insured or the conduct of an **insured person** in that capacity, or the conduct of the **business**; and
- iii) notice of which is first served on the **insured person** and notified to **us** in the **period of insurance**.

joint venture means any incorporated enterprise undertaken jointly by **you** and a **third party** or parties.

known circumstance means any fact, situation or circumstance which **you** or any **insured person** were aware of prior to the commencement of each **period of insurance** and which a reasonable person in the circumstances would have considered might give rise to a claim covered under this **policy**.

limit of liability means the maximum amount for each particular **insuring clause** or **automatic extension** in the **policy** and as shown in the **certificate of insurance** or if applicable as expressly stated in the **automatic extension** that **we** are liable to pay for all liability under the respective **insuring clause** or **automatic extension** in respect of each and every **claim**.

loss means **compensation** for which **you** and/or an **insured person** are legally liable and **defence costs** incurred by **you** or an **insured person**.

- i) In respect of Insuring clause 4 - Employment Practices Liability, **loss** also includes **back-pay**;
- ii) In respect of Insuring clause 6 - Statutory Liability, - **loss** also includes any **penalty**;
- iii) In respect of Automatic extension 28 - **employee** fidelity, **loss** also includes **direct financial loss**.
- iv) In respect of Automatic extension 29 - **third party** fidelity, **loss** also includes **direct financial loss**.
- v) In respect of Automatic extension 35 - tax audit, **loss** also includes **tax audit fees**.

but **loss** does not include **crisis loss**.

malicious falsehood means an intentionally false statement made to cause damage to another person's reputation.

managed investment has the meaning provided in the Corporations Act 2001 (Cth) as amended or replaced.

money means physical currency, current coin, bank notes, bullion, negotiable and non-negotiable instruments, either belonging to or in the care, physical custody or control of the **Insured** and for which the **insured** is legally liable, other than **property** excluded by this **policy**.

non-profit organisation means any **organisation** (but not a subsidiary **organisation**) that is exempt from the payment of income tax under the state and/or federal laws of Australia.

officer means any natural person who was, is currently or becomes during the **period of insurance** an office bearer, a person who holds an executive or managerial office (as defined by the 2001 Corporations Act (Cth) as amended or replaced, a company secretary or a management committee member of **yours** or other person elected by **you** or by **your** governing body to represent **your organisation** in directing, managing or supervising **your business** but does not include a trustee or a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, or person administering a compromise or scheme of arrangement of **your organisation**.

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official body means any **regulatory authority**, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **organisation** or **outside entity** or the conduct of an **insured person** in such capacity.

organisation means any company or other incorporated entity under the laws of Australia but excluding any entity whose securities are traded on a primary, secondary or other market.

outside director or outside directorship means the position of **director, officer**, secretary or equivalent position held by either a **director** or an officer in the governing body of an **outside entity** at **your** request.

outside entity means a **non-profit organisation** not included in the definition of **you, your, yours** or **insured** but excluding any entity that had negative net assets or a negative net worth at the start of the **period of insurance**.

penalty means any monetary sum payable by **you** or an **insured person** and required by an order of a court of competent jurisdiction, to any **regulatory authority** but excluding:

- i) any amounts payable as **compensation**;
- ii) any compliance, remedial, reparation or restitution costs;
- iii) any amounts payable for income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty;
- ii) any amounts for violation of any law or regulation with respect to vehicular, air or marine traffic;
- i) any exemplary or punitive damages;
- vi) amounts that are not insurable at law;
- vii) any legal and other costs directly attributed to the penalties levied on **you** or the **insured person**; and
- viii) any consequential or economic **loss**.

period of insurance means the time and date cover under the **policy** starts to the time and date cover under the **policy** expires as shown in the **certificate of insurance** and any subsequent period which **we** agree by **endorsement**.

personal injury means:

- i) bodily injury, illness, disease, disability, shock, fright, mental anguish (which occurs as a direct result of an accident), mental illness, psychological injury or death;
- ii) false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;
- iii) wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property or invasion of privacy;
- vi) defamation, libel, slander and **malicious falsehood** where the first publication or utterance happened after the commencement of the **policy**; or
- v) assault or battery, including use of reasonable force by **you** or at **your** direction for the sole purpose of preventing or eliminating danger to persons or property.

policy means the **certificate of insurance** and any endorsement attaching at inception or during the **period of insurance**.

pollutant means any solid, liquid, gaseous, biological or thermal irritant or contaminant including but not limited to: smoke, vapour, fumes, noise, odour or any other air emission, electric or magnetic or electromagnetic fields, soot, acids, alkalis, chemicals, waste or material to be recycled, reconditioned or reclaimed, waste water, oil or oil products, infectious or medical waste.

professional fees means the fees, **costs** and disbursements which are reasonably and necessarily incurred in connection with a **tax audit** which are payable by **you** to an accountant or other financial adviser, **registered tax agent** or legal adviser for work carried out in connection with a **tax audit**.

property means tangible property other than **money** and **securities**.

property damage means physical **loss** of, destruction of or damage to tangible property, including **loss** of use or any other consequential losses flowing from such loss, destruction or damage.

proposal means the written or electronic insurance application form or renewal declaration document together with any supplementary material completed by or on behalf the **insured** that was given to **us**, and relied on by **us** to effect this **policy**.

prosecution costs means the reasonable and necessary **costs** incurred by an **Insured person** with **our** prior written consent to bring legal proceedings to overturn:

- i) an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **Insured person** or creating a charge over real property or personal assets of an **Insured person**;
- ii) an interim or interlocutory order disqualifying an **Insured person** from holding office or from managing a company; or
- iii) a judicial order requiring an **Insured person** to be confined to a specific domestic residence or to be held in custody pending trial.

public relations expenses means the reasonable fees and expenses of a public relations firm which **you** or an **insured person** engages with **our** prior written consent (not to be unreasonably withheld) for the purpose of preventing or limiting potential adverse or negative publicity in respect of a covered **claim** or official **investigation**.

registered tax agent means a professional or group of professionals registered with the Australian Government Tax Agents' Board.

regulatory authority means instrumentalities, entities or persons appointed to act pursuant to any Act of the Commonwealth of Australia or the States or Territories of Australia for the purposes of enforcement of such Act or any other Act.

retroactive date means the date set out in the **certificate of insurance** relevant to each **insuring clause** and the **policy** does not provide cover in respect of any wrongful act, and/or **employment practice breach** as applicable which occurred prior to such date.

securities means for any negotiable or non-negotiable instruments or contracts representing **money** or other property including but not limited to any shares, debentures, stocks, notes, warrants, options, or any security for debt or equity issued or given by **you** but excluding **money** and **property**.

senior counsel means a barrister in active practice who is entitled to use the post-nominals Q.C. or S.C. in any one or more of the courts in Australia.

sexual abuse means any assault or abuse of a sexual nature, sexual molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

social engineering fraud means the intentional misleading of an **Employee** by a person purporting to be a vendor, client or customer officer, etc. through misrepresentation of a material fact which is relied on by an **Employee** believing it to be genuine.

subsidiary organisation means any company or other incorporated entity under the laws of Australia or other **organisation** which is either directly or indirectly controlled by any incorporated entity, entities or **organisation(s)** named as the **insured** in the **certificate of insurance** and whose accounts are consolidated with such entity in accordance with Australian accounting standards. Control or controlled has the same meaning as the definition of control in the Corporations Act 2001 (Cth) as amended or replaced.

The Policy: Management Liability Insurance

superannuation benefits means any superannuation benefit or benefit for death, temporary disability or permanent disability to a beneficiary of a fund.

tax audit means the carrying out of an audit on a return submitted by **you**, or on **your** behalf, by the Australian Tax Office or any Australian Commonwealth, State or Territory department, relevant body or agency, or authority which is authorised to conduct such an audit but does not include any inquiry or investigation by the Australian Taxation Office aimed at determining the **insured's** compliance with the record keeping requirements of relevant taxation legislation.

tax minimisation schemes means the arrangement of taxation and other returns, by **you** or on **your** behalf, which are designed to reduce the tax payable by **you**.

terrorism act 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 of that nation, or in pursuit of political, religious, ideological, ethnic or similar purposes or reasons to intimidate the public or a section of the public of any nation, by any person or groups of persons whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto, and which:

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

third party means any natural person or entity other than an **insured**. For the sake of clarity, a **third party** can include a **client**. In respect of Automatic extension 29 - Third party Fidelity, **Third party** does not include any person acting in collusion with any **employee**.

third party discrimination means discrimination by an **insured person** against a **third party** referencing race, colour, creed, religion, age, sex disability, marital status, national origin, pregnancy, sexual orientation or preference which is protected to any law anywhere in the world.

third party sexual harassment means sexual harassment by an **insured person** against a **third party** including unwelcomed sexual advances, or conduct of a sexual nature. For the purpose of this definition only **third party sexual harassment** does not include cover for any actual or alleged act of **sexual abuse**.

trust means a trust set up to manage a retirement or superannuation or pension fund for the benefit of **your officers** and/or **employees**.

trustee means **you** if validly appointed to act or any natural person who is elected to administer the **trust**, but does not include a professional trust company or **organisation** or an **employee** of such company or **organisation**.

trustee responsibility breach means any actual or alleged **wrongful act** or failure to act committed, attempted or allegedly attempted by a **trustee** in such capacity in respect of the administration of the **trust**.

volunteer means any person engaged by **you** to work or to provide services to **you** or on **your** behalf for **your** benefit in the carrying out of **your business** who receives no remuneration or monetary consideration for the services rendered.

we, us, our, insurer means Ansvar Insurance Limited ABN 21 007 216 506 AFS Licence No 237826.

wrongful act means any actual or alleged act, error or failure to act including but not limited to any unfair or unlawful act or failure to act any misstatement, misleading statement, neglect, error, breach of trust, breach of duty or offence pursuant to an **Act of Parliament** or common law; provided such act or failure to act is relevantly committed or allegedly committed or attempted in respect of each selected **insuring clause** as follows:

- i) Insuring clauses 1, 2, 3, 4, 6 and 7: by a **director** and/or **officer** solely in their capacity as such a **director** or **officer**;
- ii) Insuring clauses 1, 4, 6 and 7: by you;
- iii) Insuring clauses 4, 5, 6 and 7: by a **trustee** in the course of the administration of the **trust**.

you, your, yours, or insured means:

- i) the incorporated entity, entities or **organisation(s)** named as the **insured** in the **certificate of insurance**;
- ii) each **organisation** that is a **subsidiary organisation** at the commencement date of the **period of insurance** and which was disclosed by **you to us** at the time of entering into the **policy**;
- iii) any new **subsidiary organisation** formed or acquired by **you** during the **period of insurance** through consolidation, merger or purchase of its assets and in respect of which **you** assume control during the **period of insurance** provided:
 - such **organisation** is carrying on substantially the same **business** of the **insured** designated in i) above;
 - any acquisition or assumption of control increasing the total gross assets of the **insured** designated in i. above under management by more than 20% is reported to **us** within 90 days after it is effected; and
 - that the **policy** does not provide cover to the **organisation** which has become the **subsidiary organisation** or to any person who has consequently become a **director** or **officer** in respect of any **wrongful act, employment practice breach, direct financial loss or crisis** which occurred prior to the date of such formation or acquisition.

The Policy: Management Liability Insurance

OPERATIVE CLAUSE

In consideration of **your** payment of the premium and subject to the terms and conditions of the **policy**, **we** will provide cover under each **insuring clause** and **automatic extension** and listed in the **certificate of insurance** and, if applicable, any **endorsement** to the **policy**.

This insurance contract will commence from the time **we** provide written acceptance of **your proposal** and cover will conclude at 4.00pm local standard time on the date shown in the **certificate of insurance**.

We do not provide cover under the **policy** for any liability or **loss** arising out of any **wrongful act**, **employment practice breach** or **trustee responsibility breach** which occurred prior to the **retroactive date** shown in the **certificate of insurance**.

If the terms of the **policy** are not observed, cover may be reduced or cancelled. No variation of the **policy** will be effective, except where made by written **endorsement**.

CLAIMS MADE AND NOTIFIED

The **policy** operates on a 'claims made and notified' basis which means that **you** are covered for:

1. **claims** first made against **you** and notified to **us** during the **period of insurance** provided that **you** were not aware at any time prior to the start of the **period of insurance** of any fact, situation, event or circumstance which could lead to a **claim** being made against **you**; and
2. **claims** first made against **you** after the **period of insurance**, provided that the facts that gave rise to the **claim** are facts you first became aware of during the **period of insurance** and **you** notified **us** in writing of those facts during the **period of insurance**.

INTERPRETATION

Where headings are used in the **policy**, they are purely descriptive in nature and are not intended to be used for interpretative purposes.

Words importing the singular number shall include the plural and vice versa.

Insuring clauses applicable to the policy

The maximum **we** will pay under each of the following **insuring clauses** is the relevant:

- **limit of liability** (as further defined in the **policy**), or
- **aggregate limit of liability**,

shown in the **certificate of insurance** in respect of each **insuring clause** and always subject to all of the terms and conditions of the **policy** including the **aggregate policy limit**.

1. Entity Liability

We will indemnify **you** for liability for **loss** arising out of any **claim** by reason of any **wrongful act** in the management of **your business**, which **claim** is first made against **you** during the **period of insurance** and notified to **us** during either the **period of insurance** or the **extended notification period**.

2. Directors and Officers Liability

We will indemnify any **director** or **officer**, for liability incurred in their capacity as such a **director** or **officer**, for **loss** arising out of any **claim** by reason of any **wrongful act**, which **claim** is first made against them during the **period of insurance** and notified to **us** during either the **period of insurance** or the **extended notification period** and provided such **director** or **officer** is not indemnified by **you**.

3. Entity Reimbursement

We will indemnify **you** for any payment which **you** are required and are legally permitted to make to or on behalf of any **director** or **officer** for their liability for **loss** incurred in their capacity as such a **director** or **officer** and arising out of any **claim** by reason of any **wrongful act**, which **claim** is first made against them during the **period of insurance** and notified to **us** during either the **period of insurance** or the **extended notification period**.

4. Employment Practices Liability

We will indemnify **you** and/or an **insured person** for liability for **loss** arising out of any **claim** alleging an **employment practice breach**, which **claim** is first made against **you** or the **insured person** during the **period of insurance** and notified to **us** during either the **period of insurance** or the **extended notification period**.

5. Trustees Liability

We will indemnify a **trustee** for liability for **loss** arising from any **claim** alleging a **trustee responsibility breach**, first made against the **trustee** during the **period of insurance** and notified to **us** during the **period of insurance** or during the **extended notification period**.

The Policy: Management Liability Insurance

6. Statutory Liability

We agree to indemnify you and/or an **insured person** for:

- any **penalty** which is insurable at law arising from a **wrongful act** by you, **insured person** or **trustee** in the jurisdictions of, and under the laws of Australia; and
- any **defence costs** incurred directly in connection with any legal proceedings, **investigations** or inquiry which may give rise to the imposition of such **penalty**.

Provided always that:

- written notice of such legal proceedings, **investigation** or inquiry was first received by you or the **insured person** during the **period of insurance** and notified to us during either the **period of insurance** or the **extended notification period**.
- involves an allegation of a **wrongful act** committed after the **retroactive date** and which would lead to a **claim** covered under this **policy**.

7. Internet Liability

We will indemnify you and/or an **insured person** for liability for **loss** arising from a **claim** as a direct result of a **wrongful act** carried out without your consent and incurred solely in the conduct of **your internet activities** which **claim** is first made against you and/or the **insured person** during the **period of insurance** and notified to us during either the **period of insurance** or the **extended notification period**, and for which cover is not provided under your general public and products liability insurance.

8. Entity Crisis Cover

We agree to pay on your behalf any **crisis loss** which you incur by reason of a **crisis** which first occurs during the **period of insurance** and is notified to us during either the **period of insurance** or the **extended notification period** in the course of your operations that would otherwise be covered by the **policy**.

Limit of liability and excess applicable to the policy

1. We shall not be liable under the **policy** to pay any more than the amount of the **aggregate policy limit** in respect of the aggregate of all payments that we would otherwise be liable to make under the **policy**.
2. Subject to the **aggregate policy limit**, the total amount payable under each of **insuring clauses** 1 to 8, each **automatic extension** including all amounts payable in respect of all **loss, claims, defence costs, crisis loss** and penalties shall not exceed the **aggregate limit of liability** stated in the **certificate of insurance** as applying to that particular **insuring clause** or to the relevant **insuring clause** applicable to the particular **automatic extension** unless the **automatic extension** expressly provides otherwise.
3. Except as provided for in **Automatic extension** 34 - dedicated **excess limit of liability** for **insured person** and subject to the **aggregate policy limit** and the applicable **aggregate limit of liability** unless we state otherwise in writing, the total amount payable by us under each **insuring clause** of the **policy** and any **automatic extension** shall not exceed the **limit of liability** in respect of any one **claim** stated in the **certificate of insurance** as applying to that particular **insuring clause** or to the relevant **insuring clause** applicable to the particular **automatic extension** unless the **automatic extension** expressly provides otherwise. Such **limit of liability** forms part of and is not in addition to the relevant **aggregate limit of liability** and **aggregate policy limit** shown in the **certificate of insurance**.
4. Where more than one **insuring clause** covers any **claim** or **loss** then only one **insuring clause** shall apply. The **insuring clause** including the applicable **limit of liability** and **aggregate limit of liability** which in that event shall apply shall be the **insuring clause** which first appears in the following order:
 - **Insuring clause** 1 - Entity Liability;
 - **Insuring clause** 2 - **Directors and Officers** Liability;
 - **Insuring clause** 3 - Entity Reimbursement;
 - **Insuring clause** 4 - Employment Practices Liability;
 - **Insuring clause** 5 - **Trustees** Liability;
 - **Insuring clause** 6 - Statutory Liability;
 - **Insuring clause** 7 - Internet Liability;
 - **Insuring clause** 8 - Entity **Crisis** Cover.
5. If an **excess** is shown in the **certificate of insurance** in respect of the applicable **insuring clause** and **automatic extension**, then subject to all of the terms and conditions of the **policy** including the applicable **limit of liability, aggregate limit of liability** and **aggregate policy limit** we shall only be liable for amounts otherwise covered by the **policy** exceeding that **excess**.
6. Should any one **wrongful act, trustee responsibility breach** or **employment practice breach** result in more than one **claim** being made against you or an **insured person** only one **excess** will apply. This **excess** will be the highest of any **excess** noted in the **certificate of insurance** which applies to any relevant **insuring clause** or **automatic extension** under which cover is available in respect of those **claims**.

The Policy: Management Liability Insurance

7. With respect to **Automatic extension 28 - employee** fidelity, 29 - **third party** fidelity and 30 - fidelity **investigation** expenses, a series of related, repeated or continuous **dishonest acts** shall be treated as giving rise to a single **direct financial loss** and, as such, a single **excess** is payable.
8. In the event of a **claim** being based on separate, different or additional **wrongful acts, trustee responsibility breaches** or **employment practice breaches** then the applicable **excess** shall apply in respect of each **wrongful act, trustee responsibility breach** or **employment practice breach**.
9. **Defence costs** are subject to the **excess** applicable to each selected **insuring clause** or **automatic extension** under which they are otherwise covered.
10. All **claims** arising from:
 - a single **wrongful act, trustee responsibility breach** or **employment practice breach** of the **insured** or an **insured person**;
 - multiple but interrelated **wrongful acts, trustee responsibility breaches** or **employment practice breaches** of the **insured** or an **insured person**; or
 - **wrongful acts, trustee responsibility breaches** or **employment practice breaches** of the **insured** or an **insured person** which arise from the same or a related source;shall be deemed one **claim** and such **claim** shall be deemed to have been made at the time when the earliest of the **claims** was first made against **you** or an **insured person**.
11. **You** will be responsible for the first 20% of each **crisis loss** in respect of **Insuring clause 8 - Entity Crisis Cover**, such amount not exceeding \$5,000 or such other maximum **excess** for this coverage as shown in the **certificate of insurance**. All interrelated crises shall be deemed as one and the same **crisis** and also deemed to have occurred at the earliest time of the first **crisis**.

Automatic extensions applicable to the policy

1. Advancement of Defence costs

We agree that, in relation to any **claim** for which indemnity may be provided under this **policy**, **we** will pay defence costs:

- a) Where **we** have confirmed indemnity based on our assessment of the **claim** or the findings from an independent review **we** may reasonably require, **we** will pay the defence costs as they are incurred; or
- b) Where **we** have not confirmed indemnity, and **we** elect not to take over and conduct the defence or settlement of any **claim**, **we** may, at our discretion, pay defence costs to which **we** have consented as they are incurred.

Excepting where **we** have consented to pay defence costs under b) above, **we** reserve the right to recover any defence costs paid under this extension from **you** to the extent that is established by final adjudication, that **you** were not entitled to under this **policy**.

2. Attendance at official investigations or inquiries

We will pay **defence costs** incurred with **our** prior consent by an **insured person** in attending any official **investigation**, examination, inquiry or other proceedings ordered or commissioned by any **official body** or institution, where the **insured person** is legally compelled by such body or institution to attend such **investigation**, examination, inquiry or proceeding and which involves an allegation of a **wrongful act** committed after the **retroactive date** and which would lead to a **claim** covered under the **policy**;

Provided always that:

- written notice requiring such attendance is received by the **insured person** during the **policy** period and is notified to **us** during either the **period of insurance** or the **extended notification period**; and
- the total amount **we** will pay under the **policy** for all **defence costs** covered pursuant to this extension is sub-limited to \$500,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

3. Continuity of cover

In the absence of fraudulent non-disclosure or misrepresentation by **you** or an **insured person**, **we** will extend cover to **you** or an **insured person** under the **policy** for liability for **loss** to the extent it would be covered but for the existence of a **known circumstance** provided always that:

- **we** were the management liability or **directors & officers** liability insurers (however designated) of **you** and the **insured person** when **you** or the **insured person** first knew of such **known circumstance**;
- **we** continued without interruption to be the management liability or **directors & officers** liability insurers of **you** and the **insured person** since **you** or the **insured person** first knew of such **known circumstance** up until the time when the **policy** came into effect;

The Policy: Management Liability Insurance

3. Continuity of cover (continued)

- had **we** been notified of the **known circumstance** when **you** or the **insured person** first knew or ought to have known of it, **you** or the **insured person** would have been covered under the **policy** in force at that time, but are not now covered by the **policy**;
- you and/or the **insured person** seeking indemnity under the **policy** would have been covered by the **policy**, but for the **known circumstance** exclusion; and
- the **claim** or **known circumstance** had not previously been notified to **us** or to any other insurer.

The **limit of liability we** provide under this **automatic extension** is the lesser available under the terms of the **policy** in force at the earlier time (as referred to in the first sub-paragraph of this clause) or that but for the **known circumstance** would apply under the **policy**. The terms of the **policy** otherwise apply and **we** may reduce **our** liability under the **policy** to the extent of any prejudice **we** suffer in connection with the failure of **you** or the **insured person** to notify **us** at an earlier date of the **known circumstance**.

4. Court attendance costs

We agree to provide up to \$500 per day for court attendance costs incurred by the **insured person**, if the **insured person** is legally compelled to attend a **civil** proceeding as a witness in a **claim** which is covered under **Insuring clause 2 - Directors and Officers Liability**;

Provided always that:

the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

5. Deprivation of assets expenses

We agree to extend cover under the **policy** by including **deprivation of assets expenses** arising from any **claim** covered by the **policy**;

Provided always that:

the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$20,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

6. Dishonesty of others

Notwithstanding Exclusion 5 - fraud and dishonesty, **we** will extend cover to an **insured person** for liability for **loss** to the extent it would be otherwise covered under the **policy** provided always that:

- the **insured person** seeking cover pursuant to this **automatic extension**, did not engage in, permit, knowingly assist or condone such dishonest, fraudulent, malicious or illegal act or failure to act;
- the indemnity does not extend to **loss of property, money**, bearer bonds, coupons, stamps, bank notes, currency notes or negotiable instruments of any kind

belonging to the **insured person** or for damage to **property** for which the **insured person** is legally responsible;

- the **loss** sustained is not in consequence of any act or failure to act occurring after the **insured person** seeking cover pursuant to this **automatic extension** acquired reasonable cause for suspicion of dishonest, fraudulent, malicious or illegal conduct on the part of the defaulting **insured person** concerned and had the opportunity to act on the available information; and
- indemnity is not provided to the **insured person** which committed the dishonest, fraudulent, malicious or illegal conduct.

7. Estate, heirs and legal representatives

The estates, heirs or legal representatives of any deceased or incompetent **insured person** shall be indemnified in respect of liabilities of that **insured person** covered by the **policy** provided always that any such indemnity shall be subject to all the terms and conditions of the **policy** in so far as they are applicable.

8. Extended claim and reporting period

If **we** refuse at expiry of this insurance to offer any renewal terms and conditions, **you** and any **insured person**, shall jointly (but not separately) have the right to request prior to the expiry of the **period of insurance** and upon payment of an amount equal to 100% of the total expiring annual premium stated in the **certificate of insurance** to an **endorsement** to the **policy** providing for:

- an extension of the **extended notification period** to a period being the period of twelve (12) months immediately following the expiry of the **period of insurance**; and
- any **claim** made and reported to **us** during this endorsed **extended notification period** being deemed to have been made and reported to **us** immediately prior to the expiry of the **period of insurance** provided that the **claim** arises out of a **wrongful act, trustee responsibility breach or employment practice breach** which occurred prior to the expiry of the **period of insurance** and there is no cover for any **claim** arising out of a **wrongful act, trustee responsibility breach or employment practice breach** which occurred after the expiry of the **period of insurance**.

9. Insured versus insured cover

Notwithstanding Exclusion 11 - **insured** versus **insured**, **we** will extend cover otherwise available under the **policy** to any individual **director** or **officer** in respect of the following:

- a **claim** for contribution or indemnity by another **director** or **officer** in respect of a liability for **loss** which is covered under **Insuring clause 2 - Directors and Officers Liability** of this **policy**;
- a **claim** for contribution or indemnity by another **trustee** in respect of a liability for **loss** which is covered under **Insuring clause 5 - Trustees Liability** of this **policy**;
- any shareholder derivative action brought or maintained in his/her/its own right or on behalf of the **insured**, provided the shareholder was not a **director, officer** or a **trustee** at the time of any **wrongful act** or **trustee responsibility breach**;

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9. Insured versus insured cover (continued)

- any derivative action brought or maintained by a liquidator, administrator, receiver or administrative receiver on behalf of the **insured**;
- any **claim** brought against the **director, officer or trustee** by any **regulatory authority** of competent jurisdiction on behalf of the **insured**; or
- a **claim** brought or maintained against the **director, officer or trustee** by another **director, officer or trustee** alleging an **employment practice breach or discrimination**, harassment or defamation but only if such conduct occurred in the performance of their duties as a **director, officer or trustee**;

Provided always that:

- the person or **organisation** bringing, making or controlling the **claim** acts without any prior direct or indirect solicitation or enticement of or with any other **director or officer** under the **policy** (other than co-operation legally required by any statutory or **regulatory authority**);
- the **claim** is not brought about by or contributed to by and does not involve industrial disputes (whether between the **insured** and **employees** or their union or otherwise), strike, picket, lock out, go slow or work to rule;
- the **claim** does not arise from any act or failure to act in respect of which liability for **loss** is covered by under another **insuring clause or automatic extension** of this **policy**;
- the **claim** does not arise as a result of any act or failure to act the subject of an exclusion in this **policy**; and
- a **claim** by reason of an **employment practice breach** is subject to the **limit of liability** for **Insuring clause 4 - Employment Practices Liability** stated in the **certificate of insurance**.

10. Joint venture cover

We agree to extend cover under the **policy** to an **insured person** in respect of any **claim** made against that **insured person** arising from any **joint venture** but cover shall not extend to any **claim** brought by or on behalf of any party to the **joint venture** or any **organisation or trust** established to conduct, control or manage such **joint venture**.

11. Occupational health and safety

Notwithstanding Exclusion 16 - **personal injury** and **property damage**, where **you** or a **director** or any **officer** are legally compelled by written notice received during the **period of insurance**, to attend any official **investigation**, examination, inquiry or other proceedings ordered or commissioned by any **official body** or institution alleging a breach of occupational health & safety laws of any State or Territory of Australia a law or regulation including dealing with industrial or workplace deaths; **we** agree to extend cover for any **defence costs** reasonably and necessarily incurred, with **our** prior written consent.

Provided always that:

- This **automatic extension** does not provide cover for any **claim** for **compensation** by an **employee** or any liability for a **loss** in respect of a **claim** otherwise excluded by the **policy**;

- the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

12. Directorships (non-profit organisation(s))

We agree to extend cover under the **policy** by including in the definition of **director** and **officer** any **director or officer** who is required to hold a position in the governing body of any non-profit **organisation** at **your** request prior to or during the **period of insurance**;

Provided always that:

- any **wrongful act** giving rise to a **claim** occurred before the **director or officer** ceased holding such position;
- cover pursuant to this **automatic extension** will not extend to any other **director or officer** (by whatever name called) of the **non-profit organisation** if they are not otherwise covered under the **policy**;
- no cover whatsoever is available to the **non-profit organisation** under the **policy**.
- for the purpose of applying **Automatic extension 9 - insured versus insured** cover, to the cover provided in this **automatic extension** and for no other purpose, the term '**insured**' will be deemed to include the **non-profit organisation**;
- the cover available by reason of this **automatic extension** shall only apply in **excess** of the indemnity available to the **director or officer** under the management liability or **directors and officers policy** (however designated) held by the **non-profit organisation** with another **insurer** covering the liability of that person; and
- where **we** have issued another insurance **policy** to the **non-profit organisation** providing similar coverage allowed under the **policy**, this **automatic extension** shall only apply in **excess** of such separate coverage.

13. Pollution defence costs

Notwithstanding Exclusion 17 - pollution, **we** will extend cover to include **defence costs** incurred in respect of any **claim** against **you** or any **director or officer** arising out of the discharge, dispersal, release or escape of **pollutants** in the course of **your** operations that would otherwise be covered by the **policy**;

Provided always that:

- the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available; and
- cover is not provided for any pollution occurring in the United States of America, the Dominion of Canada or the Territories or Protectorates of those Countries.

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14. Preservation of indemnity

If an **insured person** is not able to obtain payment pursuant to a lawful right of indemnity from an **organisation insured** under the **policy** by reason only of the **organisation** having been placed in liquidation and such payment is in respect of a liability for **loss** that would otherwise be covered by **Insuring clause 2 - Directors and Officers Liability**, then **we** will extend cover under **Insuring clause 2 - Directors and Officers Liability** to that **insured person**, provided the burden of furnishing satisfactory proof to obtain the benefit of this **automatic extension** shall rest entirely with the **insured person**.

15. Retirement cover for insured persons

If **you** do not renew the **policy** or do not replace it with any other insurance providing coverage similar to that provided under **Insuring clause 2 - Directors and Officers Liability** and do not purchase an extension to the **extended notification period** pursuant to **Automatic extension 8 - extended claim and reporting period**, then any **insured person** who retired from all employment or office prior to expiry of the **period of insurance** shall but only in respect of a **claim** against them be entitled under this **automatic extension** to:

- an extension of the **extended notification period** to a period being the period of 84 months immediately following the expiry of the **period of insurance**; and
- any such **claim** made and reported to **us** during this extended **extended notification period** shall be deemed to have been made and reported to **us** immediately prior to the expiry of the **period of insurance** provided always that the **claim** arises out of a **wrongful act**, or **employment practice breach** which occurred prior to the date of their retirement and there is no cover for any **claim** arising out of a **wrongful act**, or **employment practice breach** which occurred after the date of their retirement.

This **automatic extension** confers no entitlement or benefit on **you** or any other **insured person**.

16. Prosecution costs

We will pay **prosecution costs** incurred with **our** previous written consent on behalf of an **Insured person** in connection with a **claim** which first occurs and is notified to **us** during the **period of insurance**. The total amount **we** will pay under this **automatic extension** is sub-limited to \$50,000.

We will pay **prosecution costs** incurred with **our** previous written consent on behalf of an **Insured Person** in connection with a **claim** which first occurs and is notified to **us** during the **period of insurance**. The total amount **we** will pay under this **automatic extension** is sub-limited to \$50,000. This sub-limit forms part of and is not in addition to the aggregate **policy limit** and the **limit of liability** and the aggregate **limit of liability** applicable to any insuring clause under which cover is available.

17. Runoff cover for subsidiary organisations

In the event that a **subsidiary organisation** ceases to be a **subsidiary organisation** during the **period of insurance**, then the **policy** shall continue to apply with respect to any **claim** made against such **subsidiary organisation** and any **insured person** during the **period of insurance** or the **extended notification period** (if applicable);

Provided always that:

- cover is only provided in respect of any **wrongful act** or **employment practice breach** committed prior to the date such entity ceased to be a **subsidiary organisation** and committed during the time such entity was a **subsidiary organisation**;
- cover is only provided for any **direct financial loss** resulting from **dishonest acts** committed prior to the date such entity ceased to be a **subsidiary organisation** and committed during the time such entity was a **subsidiary organisation** or otherwise covered by this **policy**;
- cover is not provided for any **wrongful act** or **employment practice breach** preceding the **retroactive date** shown in the **certificate of insurance**.

18. Runoff cover for outside directorships

In the event that an **insured person** ceases to act as an **outside director** of an **outside entity** (as defined within this **policy**) at any time prior to or during the **period of insurance**, then the **policy** shall continue to apply with respect to any **claim** first made against such **insured person** during the **period of insurance** or the **extended notification period** (if applicable);

Provided always that:

- cover is only provided with respect to **wrongful act** or **employment practice breach** committed prior to the date such person ceased to be an **outside director** of such **outside entity** and committed during the time such person was an **outside director** of such **outside entity**;
- cover is not provided for any **wrongful act** or **employment practice breach** preceding the **retroactive date** shown in the **certificate of insurance**.

19. Spousal liability cover

We agree to pay on behalf of the lawful spouse of an **insured person** their liability for all **loss** as a result of an alleged **wrongful act**;

Provided always that:

We shall only indemnify the spouse in respect of **loss**:

- arising from a **claim** made against the lawful spouse only because he or she is the lawful spouse of the **insured person**;
- which is not brought by reason of the lawful spouse being knowingly or recklessly party to or involved in any **wrongful act**; and
- relating 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.

Where a conflict arises between this **automatic extension** and Exclusion 11 - **Insured** versus **Insured** of the **policy**, the provisions of this **automatic extension** shall prevail.

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20. Waiver of excess

No **excess** shall apply or **we** agree to reimburse an **insured person** for any payments made within the **excess**, in relation to a **claim** where final judgement is obtained and no **insured person** is liable in respect of that **claim** provided always that this **automatic extension** does not apply to any **claim** that is settled prior to such final judgement being obtained.

21. Reinstatement in the event of a recovery

Any amounts recovered by **us** (net of **our** reasonable expenses associated with such recovery) following a paid **claim** under the **policy** shall proportionally reduce the impairment of the **limit of liability**.

22. Emergency defence costs

If it is not possible for the **insured** to obtain **our** consent prior to incurring **defence costs** for a **claim** covered under this **policy**, **we** will waive the requirement of prior consent provided **our** consent is obtained within thirty (30) days of the first of such **defence costs** being incurred.

Provided always that:

the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

23. Civil or bail bond expenses

We agree to pay on behalf of an **insured person**, **civil** or bail bond expenses incurred by an **insured person** during the **period of insurance** in connection with a **claim** that is covered under the **policy**.

Provided always that:

the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$250,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

24. Third party discrimination and sexual harassment

We will indemnify **you** or an **insured person** for liability for **loss** arising out of any **third party claim** alleging any **third party discrimination** or **third party sexual harassment**, which **third party claim** is first made against **you** or an **insured person** during the **period of insurance** and notified to **us** during either the **period of insurance** or the **extended notification period**.

Provided always that:

the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. The **policy excess** applicable to **Insuring clause 4 - Employment Practices Liability** will apply for any **claim** made under this **automatic extension**.

25. Current outside directorships (including non-profit organisations)

Where a **director** or **officer** holds an **outside directorship** with **your** permission at the commencement of the **period of insurance** in any **outside entity** named in the **certificate of insurance**, or any **non-profit organisation** associated to the **outside entity**, **we** will extend cover to that **director** or **officer** of the **outside entity** or **non-profit organisation** under **Insuring clause 2 – Directors and Officers Liability** and to **you** under **Insuring clause 3 – Entity Reimbursement**;

Provided always that:

- cover is not be provided for any **wrongful act** preceding the **retroactive date** shown in the **certificate of insurance**;
- cover will not extend to any **director** or **officer** (by whatever name called) of the **outside entity** who is not also an **insured person** under this **policy**;
- no indemnity whatsoever is available to the said **outside entity** or **non-profit organisation** under this **policy**;
- the cover available by reason of this **automatic extension** shall only apply in **excess** of the indemnity available to the **director** or **officer** under the management liability **policy** (however designated) held by the **non-profit organisation** with another **insurer** covering the liability of that person; and
- this **automatic extension** shall only apply where there is no other insurance issued by **us** to the said **outside entity**.

We will extend the indemnity granted by this **automatic extension** to any **director** or **officer** entering into such an **outside directorship** with **your** permission during the currency of the **policy** for an initial period being the period of sixty (60) days from the commencement date of any such appointment or until the expiry of the **policy** whichever is shorter; and **we** will maintain such coverage beyond this initial period where:

- such **outside directorship** is reported to **us** within sixty (60) days after it is effected; and
- **we** confirm continuation of the interim cover for such **outside directorship**, by **endorsement** of this **policy**.

26. Run-off after merger or consolidation

If the **insured** merges or is consolidated with or becomes the subsidiary of another incorporated **organisation**, or sells all or substantially all its assets to another incorporated **organisation**, the **insured** and all **insured persons** shall have jointly (but not separately) the option to:

- an extension of the **extended notification period** to a period being period of twelve (12) months immediately following the expiry of the **period of insurance**; and
- any such **claim** made and reported to **us** during this **extended notification period** shall be deemed to have been made and reported to **us** immediately prior to the expiry of the **period of insurance** provided always that the **claim** arises out of a **wrongful act**, or **employment practice breach** which occurred prior to the date of such merger, consolidation or sale and there is no cover for any **claim** arising out of a **wrongful act**, or **employment practice breach** which occurred after the date of such merger, consolidation or sale.

The Policy: Management Liability Insurance

26. Run-off after merger or consolidation (continued)

Provided always that:

- the right to this **automatic extension** is exercised in writing prior to the expiry of the **period of insurance**;
- there has been and is no **known circumstance** or **claim** against any **insured** or **insured person** to which the **policy** may respond;
- you agree to pay each year the premium **we** require; and
- in the event this **automatic extension** is exercised, **Automatic extension 8 - extended claim** and reporting period will not apply.

27. Personal injury Cover For Trustees

Notwithstanding Exclusion 16 - **personal injury** and **property damage, Insuring clause 5 - Trustees** Liability extends to cover liabilities for **personal injury** incurred by a **trustee** including involuntary defamation, libel or slander in the course of the administration of the **trust**;

Provided always that:

- this cover has not been provided by a general public and products liability insurance **policy** purchased by the **trustee**;
- the total amount **we** will pay under the **policy** under this **automatic extension** is sub-limited to \$1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

28. Employee fidelity

We will indemnify **you** for liability for any **direct financial loss** caused by an **employee** committing a **dishonest act** against the **insured**, first **discovered** during the **period of insurance**.

Provided always that:

the total amount **we** will pay under this **automatic extension** shall not exceed the amount of the **Employee Fidelity** sub-limit specified in The Schedule . This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

29. Third party fidelity

We will indemnify **you** for liability for any **direct financial loss** caused by a **third party** committing a **dishonest act** against the **insured**, first **discovered** during the **period of insurance**.

For the avoidance of doubt **we** will indemnify **you** for any **direct financial loss** as the direct result of **Social engineering fraud**, which is first **discovered** during the **period of insurance**.

Provided always that:

the total amount **we** will pay under this **automatic extension** shall not exceed the amount of the **Third party Fidelity** sub- limit specified in The Schedule . If no sub-limit is shown in the Schedule then the maximum payable under this **automatic extension** is \$25,000. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available.

30. Fidelity investigation expenses

We will pay any reasonable expenses incurred by **you** with **our** written consent for the purposes of establishing the existence and amount of the **direct financial loss** covered under **Automatic extension 28 - employee** fidelity and **29 - third party** fidelity of this **policy**.

For sake of clarity reasonable costs payable under this **automatic extension** shall not include wages, salaries, time costs and expenses or other remuneration of any **insured person**, or the time or expenses incurred by **your clients**.

The total amount **we** will pay under this **automatic extension** is sub-limited to \$25,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. No **excess** shall apply to this **automatic extension**.

31. Data Reproduction expenses

We will pay any reasonable expenses incurred by **you** with **our** written consent reasonable costs to reproduce or duplicate damaged or destroyed **electronic data** or computer programs directly arising from any **direct financial loss** covered under **Automatic extension 28 - employee** fidelity and **29 - third party** fidelity of this **policy**.

If such **electronic data** or computer programs cannot be duplicated from other **electronic data** or computer programs then **we** will pay any reasonable expenses incurred by **you** with **our** written consent for reasonable costs incurred to purchase the replacement computer program software, or if it cannot be purchased, for the time taken for computer programmers, technical experts or consultants to restore such **electronic data** or computer programs to substantially the same level of operational capability existing immediately before the covered **loss**.

The total amount **we** will pay under this **automatic extension** is sub-limited to \$25,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. No **excess** shall apply to this **automatic extension**.

32. Identity fraud expenses

We will pay any reasonable **identity fraud expenses** incurred by **you** with **our** written consent if any party other than the **insured** enters into any agreement with any **third party** fraudulently representing themselves as the **insured**, then **we** shall pay **identity fraud expenses**.

The total amount **we** will pay under this **automatic extension** is sub-limited to \$25,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. No **excess** shall apply to this **automatic extension**.

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33. Public relations expenses

We agree to pay any reasonable and necessary **public relations expenses** incurred by **you** or an **insured person** against which or whom a **claim** is made and which is covered by the **policy**.

The total amount **we** will pay under this **automatic extension** is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. No **excess** shall apply to this **automatic extension**.

34. Dedicated excess limit of liability for insured person

Insuring clauses 2, 3 and 4 are extended as follows:

In the event that the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** and all other indemnification available to an **insured person** is exhausted (including but not limited to by **you** or an **outside entity**) and any other insurance (including any **policy** taken out on behalf of or for the benefit of the **insured person**, including policies specifically **excess** of this **policy**) in respect of such **loss** resulting from a **claim** for a **wrongful act**, **we** will pay on behalf of any **insured person**, **loss** up to \$1,000,000

The **aggregate limit of liability** of the **insurer** under this **automatic extension** will not exceed during the **period of insurance**:

- \$1,000,000 in the aggregate for each **insured person**, and
- The aggregate **policy** limit specified in the **certificate of insurance** for all **loss** paid on behalf of all **insured persons**

The cover under this **automatic extension** is in addition to, and not part of, the **limit of liability** under the **policy**. However, in respect of any sub-limit, this **automatic extension** does not operate until exhaustion of the **limit of liability**. No **excess** shall apply to this cover. Further, **we** agree that this **automatic extension** cannot be cancelled by **you**.

35. Tax audit

We will refund **you** for **professional fees** incurred by you following completion of a **tax audit** and/or in connection with such tax audit commenced or completion of a **tax audit** and notified to us during the **policy** period, provided **you**:

- lodged any taxation and other returns for the period that is the subject of the **tax audit** and have paid all
- taxes within 90 day of the time limits prescribed by relevant legislation, or if an extension is granted by
- the Commissioner of Taxation, within the further period granted; and
- have made full and complete declarations of all relevant liabilities, income and capital gains derived by **you** and of all Commonwealth, State or Territory taxation liabilities due to be paid or remitted by **you** during the audited period, and all deductions including capital losses or other amounts claimed by **you** in respect of the same period; and
- respond to letters, requests and enquiries from the **auditor** within a reasonable time.

For the purpose of this **automatic extension**, the **tax audit** commences at the time **you** or **your** accountant or other financial adviser, **registered tax agent** or legal adviser first receive notice that an **auditor** proposes to conduct a **tax audit** and is completed at the earlier of when either;

- the **auditor** has given written notice to that effect; or
- the **auditor** notifies **you** that it has made a concluded decision; or
- the **auditor** has issued an assessment or an amended assessment of **your** returns; or
- in the absence of any of the above, where **you** declare in writing that such a **tax audit** has been concluded.

The total amount **we** will pay under this **automatic extension** is sub-limited to amount specified in the schedule. This sublimit forms part of and is not in addition to the **aggregate policy limit** and the **limit of liability** and the **aggregate limit of liability** applicable to any **insuring clause** under which cover is available. No **excess** shall apply to this **automatic extension**.

36. Free legal consultation

During the **period of insurance** the **insured** is entitled to up to two (2) hours free legal advice from the appointed firm and nominated practitioner as prescribed by **us**, on any matter relating to the **insured's** professional **business**.

This **automatic extension** is subject to the following:

- the legal advice will be of a general nature;
- any unused hours or consultations cannot be aggregated from one **period of insurance** to another;
- **we** reserve the right to change the appointed firm or nominated practitioner at any time. These changes will be notified to the **insured** upon request;
- the **insured** may not seek legal advice on this **policy** or other indemnity issues concerning insurance policies issued by **us** under this **automatic extension**.

Exclusions applicable to the policy

The **policy** does not cover, and **we** are not required to make any payment in respect of, any **loss**, **crisis loss** or **claim** directly or indirectly arising out of, attributable to or in connection with:

1. Asbestos

Asbestos or asbestos products or materials in any form or quantity or for defending any **claim** for such actual or alleged liability.

2. Breach of professional duty

- The rendering or failure to render professional services and/or professional advice to a **third party**; or
- a breach or alleged breach of any contract or duty for the provision of such professional services and/or professional advice;

provided always that this exclusion does not apply to such services provided by an **insured person** in his or her capacity as **director**, **officer** or **trustee** and in circumstances where such professional services or professional advice is provided to the **insured** and not to third parties in the course of the **your professional business**.

3. Cyber-attack liability

The incidence of a cyber attack.

4. Contractual liability

(not applicable to Insuring clause 2)

Any actual or alleged liability assumed by the **insured** or an **insured person** under any contract, warranty or guarantee, except to the extent such liability would attach to such party in the absence of such contract, warranty or guarantee. Other than in respect of a warranty or guarantee, this exclusion does not apply to employment contracts.

5. Fraud and Dishonesty

- Any dishonest, fraudulent, criminal or malicious act or failure to act;
- an act committed with the intention of causing harm or **loss** of any kind or conduct intended to mislead or deceive a claimant;
- any act or failure to act committed with a reckless disregard for the consequences of such act or failure to act;
- the condoning of acts or failure to act of the type referred to in this clause;
- any deliberate breach of any statute or regulation;
- improperly benefiting from **securities** transactions as a result of information that was not available to other sellers and/or purchasers of such **securities**; or
- gaining an illegal advantage;

by **you** or any person seeking the benefit of the **policy**; provided always that this exclusion shall not apply to cover provided to **you** or an innocent **insured person** under **Automatic extension 6** - dishonesty of others.

This exclusion will only apply where the conduct in question has been established by admission, court judgment or other final adjudication. No fact pertaining to conduct of, or knowledge possessed by, an **insured person** will be imputed to any other **insured person** to determine whether any part of this exclusion applies.

Automatic extension 2 - attendance at official **investigations** or inquiries or **Automatic extension 11** - occupational health and safety.

6. Employment liability

Any **claim** by an **employee** arising from the employment of the person by **you** or arising from any employment dispute, or arising from any leave, worker's **compensation**, disability benefits, unemployment benefits, redundancy or severance payments, retirement benefits, social security benefits, **superannuation benefits** or any similar employment obligation, other than as provided under **Insuring clause 4** - Employment Practices Liability.

7. Failure of investments

The failure of **your** investments or investments to perform to expectations, except where the failure is a direct result of a **wrongful act** unconnected with the performance of the investments and not otherwise excluded under this **policy**.

8. Financial institutions

Your operation of or involvement in the conduct of any merchant or investment bank, building society, credit union, finance company, insurance or reinsurance company, mortgage bank, savings or loan association, stock broker, fund manager, asset management company, superannuation fund or banking **business** as defined in the Banking Act 1959 (Cth).

9. Fines and penalties

- Any fine and/or **penalty** imposed by law;
- punitive, exemplary or aggravated or multiple damages;
- income tax and other fiscal taxes and duties or any surcharges/penalties applicable;

provided that this exclusion will not apply to cover provided under **Insuring clause 6** - Statutory Liability other than if the **penalty** is attributable to any circumstances of which **you** or the **insured person** were aware that may give rise to the imposition of a **penalty** and steps could have been taken after such awareness to avoid any liability to have a **penalty** imposed.

10. Insolvency and change of ownership

Any act, error or failure to act which:

- whether actual or alleged would constitute insolvent trading contrary to the Corporations Act 2001 (Cth.) as amended or replaced;
- occurs after **you** enter liquidation, administration, receivership or any other insolvent administration; or
- occurs after any other entity acquires a majority or controlling interest in **your organisation**.

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11. Insured versus insured

Any **claim** brought by **you**, or on **your** behalf, against any **insured person** or their estates, heirs, representatives, successors or assigns or brought by any **insured person** against **you** or any other **insured person**, other than as provided in **Automatic extension 9 - insured versus insured** Cover of the **policy**.

12. Internet Technology Hazards Exclusion

Any losses arising, directly or indirectly, out of, or in any way involving the

- a) use or design of computer systems or programs by the **insured** other than liability arising out of normal, everyday use of the internet for email, intranet and associated activity, or arising out of any material on the **insured's** website in support of the **insureds** product or service.
- b) **Property** damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, though or in connection with:
 - i) The use of any computer hardware or software.
 - ii) The provision of computer or telecommunications services by or on behalf of the insured.
 - iii) The use of computer hardware or software of any third party, whether authorised or unauthorised, including any damage caused by any computer virus.

Nothing in this exclusion shall be construed to extend coverage under the **policy** to and liability which would not have been covered in its absence.

13. Intellectual property rights

Any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual **property** rights, provided that this exclusion shall only apply to the cover provided to **you** under **Insuring clause 1 - Entity Liability**.

14. Known claims or prior acts

- Any **wrongful act, trustee responsibility breach** or **employment practice breach** occurring prior to the **retroactive date** applicable to each of **Insuring clauses 1 to 8**;
- any **known circumstance**; or
- facts or circumstances which were notified to **your insurer** under the provisions of any insurance **policy** in force prior to the commencement of the **policy**.

15. Lawful compliance

Any liability in respect of which **we** are legally prohibited from indemnifying **you** or an **insured person** under the Laws of Australia or any other country in which a **claim** arises.

16. Lotteries

any **claim**, loss, investigation, loss or damage to documents or **costs** and expenses arising from or attributable to: any contest, lottery, promotional game or other game of chance whatsoever organised, offered, held by or promoted by or on behalf of **you**.

17. North American Operations

all claims arising **our** of operations (as herein defined) located in the United States of America and/or Canada.

18. Nuclear risks

caused by, contributed by, resulting from or otherwise in connect with:

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

19. Personal injury and property damage

- **personal injury** or death of or harassment of or **discrimination** against any person; or
- **property damage** or the sale, supply, storage or manufacture of goods of any kind;

provided that this exclusion does not apply to the cover provided by **Insuring clause 4 - Employment Practices Liability** and **Automatic extension 23 - third party discrimination** and sexual harassment.

20. Pollution

- The discharge, dispersal, release or escape of **pollutants**; or
- the cost of removing, nullifying or cleaning up **pollutants**; or
- the cost of preventing the escape of **pollutants**.

Provided this exclusion shall not apply to the **Automatic extension 13 - pollution defence costs**.

21. Product liability and product recall

- the manufacture, distribution and/or sale of products by or on behalf of the **Insured**; or
- the recall of any products manufactured, distributed and/ or sold by or on behalf of the **Insured**.

22. Property use or ownership

- Land, buildings, machinery and other fixed assets; or
- aircraft, watercraft or vehicle of any kind.

23. Prospectus liability and securities

The offer, issue, sale, purchase or transfer of **your securities** or the making of any representation for or in connection with such **securities** or any public or private offering of **securities**.

24. Royalties and fees

any liability to any writer, lyricist, artist or any person, or such person's heirs or assigns, seeking recovery of profits, royalties, fees or any other amounts whatsoever alleged to be due, or any **Claim** by any such person against an **Insured** alleging **excessive** or unwarranted fees, **compensation**, or whatsoever charges of any kind imposed or attempted to be imposed by an **Insured**;

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25. Sexual abuse

any actual or alleged act of **sexual abuse**, provided this exclusion shall not apply to any alleged sexual harassment in connection with an **employment practice breach**.

26. Spam

any unsolicited electronic dissemination of emails or other communications to multiple actual or prospective customers by the **insured** or any other **third party**, including actual or alleged violations of the Spam Act 2003 (Cth), taking into account amendments within the Competition and Consumer Act 2010 (Cth), or any other federal, state or foreign anti-spam statute or federal, state or foreign statute, law, ordinance or regulation that prohibits or limits the sending, transmitting, communication or distribution of material or information in any foreign jurisdiction.

27. Subsidiaries and related entity claims

Any **claim** brought by or on behalf of:

- an **organisation** or entity which is a **subsidiary organisation**;

or

- an **outside entity** where the **claim** is made against **you** upon direct or indirect solicitation or enticement by an **insured person** occupying a **directorship** position on the board of such **outside entity**.

28. Superannuation benefits

- the payment or denial of any Superannuation Benefit, to a beneficiary of a Fund, other than in respect to **Defence costs** of the **Trustee**.

29. Trade and administration transactions

Any **claim** based upon or in consequence of:

- any trading or **business** debt incurred by **you**; or
- the failure to collect contributions for any superannuation or pension fund or to remit such monies to any superannuation or pension fund.

30. Trade practices

Any actual or alleged violation of the Competition and Consumer Act 2010 (Cth.) or any State Fair Trading Acts of Australia or similar legislation in any other jurisdiction relating to:

- penal or criminal provisions; or
- provisions applying to **business** competition, unfair trade practices or tortious interference with any **business** or contractual relationships.

31. Trustees liability

Any liability as a **trustee** or the failure of the **organisation** to pay into, or collect contributions for, a fund or **trust** as required by law and/or a fund **trust** deed except as provided under **Insuring clause 5 - Trustees Liability** and **Automatic extension 27 - personal injury** cover for **trustees**.

32. Waiver of rights

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which would have been covered by this policy, we will not cover you under this policy for that loss, damage or liability other than to the extent provided under any Section of this policy or agreed by us in writing.

33. War and terrorism

- War, invasion, act of foreign enemy, hostilities or warlike activities operations (whether war is formally declared or not), **civil** war, insurrection, rebellion, **civil** uprising commotion assuming the proportions of or amounting to a popular rising, mutiny, military rising, military or usurped power, revolution;
- 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** committed by any **director** or **officer**; or
- any **terrorism act**, regardless of any other cause or event contributing concurrently or in any other sequence to the **loss**, or any action taken in controlling, preventing, suppressing, retaliating against, responding to or in any way relating to a **terrorism act**.

34. Worldwide Punitive Damages Clause

punitive, exemplary, aggravated or multiplication of compensatory damages, imposed by a court of law or under any statute or government regulation.

35. Third party discrimination or sexual harassment

Arising from, attributable to or in connection with **third party discrimination** and **third party sexual harassment**, other than as provided under **Automatic extension 23 - third party discrimination** or sexual harassment.

36. Illegal copies of programs

Any **data** reproduction fees, costs or expenses **claimed** under **Automatic extension 31 - data** reproduction costs where the reconstitution of **data** is required as a result of an **insured person** knowingly using illegal copies of programs.

37. Communicable Disease

Contributed to by, or in connection with (in each case whether directly or indirectly):

- a) Highly pathogenic avian influenza in humans; or
- b) Any disease(s) determined to be a listed human disease pursuant to subsection 42(1) of the Biosecurity Act 2015 (Cth), or any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia, including delegated legislation; or
- c) Any mutation of the diseases described in a) to b) inclusive.

Including any fear or threat thereof (whether actual or perceived) or action taken by a competent public authority in controlling, preventing or suppressing such disease.

The Policy: Management Liability Insurance

38. Additional exclusions applying to employment practices liability

In respect of the cover provided under **Insuring clause 4 - Employment Practices Liability**, the **policy** does not cover **loss** or make any payment in connection with any **claim** made against **you** or an **insured person** for or in respect of:

- a contract of employment alleged to be arsh, unconscionable or contrary to public interest;
- the seeking of relief in respect of a contract for service alleged to be unfair pursuant to the Fair Work Act 2009 (Cth) as amended or replaced, or similar industrial relations legislation in the other states or territories of the Commonwealth of Australia or in New Zealand;
- in relation to any Workers' **Compensation** or Occupational Health and Safety Acts or similar workplace legislation;
- for the cost of physical modifications to premises, plant or equipment owned or occupied by **you**;
- brought about by contributed to by or which involves industrial disputes (whether between the entity or the insured persons or between employees or their union or generally), strike, picket, lockout, go slow or work to rule; or
- any amount which **you** are or an **insured person** is required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.

39. Additional exclusions applying to employee fidelity and third party fidelity

We will not pay for loss consisting of or which arises from or in connection with:

- **direct financial loss** arising out of or in any way connected with any **dishonest acts** committed, in whole or part, outside of Australia or New Zealand.
- **direct financial loss:**
 - i) first **discovered** prior to the commencement of the **period of insurance**; or
 - ii) first **discovered** after the end of the **period of insurance**, or the **discovery period** if applicable; or
 - iii) in any way connected with any **employee** or **third party** from the time any **director** or **officer** (who is not in collusion with such **employee** or **third party**) had actual knowledge that the **employee** or **third party** had committed or was suspected of having committed any fraudulent or **dishonest act**, even if it does not constitute a **dishonest act** as defined; or
 - iv) caused by any **employee** if a **director** or **officer** possessed at any time knowledge of any act or acts of theft, fraud or dishonesty committed by such **employee** prior to employment by the **insured provided** the act(s) involved money, securities or property valued at \$10,000 or more, or such **director** or **officer** failed to make reasonable enquiries prior to employment of such **employee**.
- **direct financial loss** arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity, of:
 - i) a **director** who at the time of the **dishonest act** owns or controls more than 5% of the issued share capital of the **insured**; or

- ii) 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 share capital of the **insured** or any of its subsidiaries or any associated **insured**.

- Any indirect or consequential loss of any nature, including but not limited to:
 - i) any **loss** of income (such as interest and dividends) not realised by the **insured** or any other person or **organisation**; or
 - ii) any **costs** incurred by the **insured** in re-writing or amending the **insured's** software programs or systems where such re-writing or amending is necessary to correct the programs or systems; or
 - iii) any contractual penalties incurred by the **insured**; or
 - iv) any liability to a **third party**; or
 - v) any **costs**, fees or other expenses incurred by the **insured** in establishing a right under this **policy** (except as provided for under Claims Conditions and Procedures 12 - notification of **direct financial loss**); or
 - vi) any **costs**, fees or other expenses incurred by the insured in prosecuting or defending any demand, **claim** or legal proceeding resulting from a **direct financial loss** which is covered under this **policy**.
- **direct financial loss** the proof of which is dependent solely upon:
 - i) profit and loss computation; or
 - ii) a comparison of inventory records with an actual physical count.

If, however, an **employee** is identified as having caused a **direct financial loss**, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the **direct financial loss** as required by Claims Conditions and Procedures 12 Notification of Direct financial loss.

- **direct financial loss** arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, proprietary information, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.
- **direct financial loss** arising out of or in any way connected with:
 - i) the voluntary giving or surrendering of **money**, securities or other **property** in any exchange or purchase, unless such **direct financial loss** is directly caused by **dishonest acts** committed; or
 - ii) the complete or partial non-payment or default under any credit arrangement including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason; or
 - iii) any trading in **securities**, whether or not in the name of the **insured** and whether or not in a genuine or fictitious account; or
 - iv) the forgery or alteration or fraudulent use of any credit card, store card, fuel card or other form of credit issued by the **insured** to **employees**, unless the provisions, conditions and other terms under which such credit card, store card or fuel card issued have been fully complied with by the **insured**.

The Policy: Management Liability Insurance

39. Additional exclusions applying to employee fidelity and third party fidelity (continued)

- any **direct financial loss** occurring following forcible or violent entry to any premises occupied by an **insured** by any **third party** where such **third party** is acting alone and not in collusion with any **employee**.
- any **direct financial loss** connected with the issuing and drawing of cheques, account withdrawals or funds transfers sustained by the **insured** by reason of the absence of or failure to have a clear segregation of duties and procedures in connection with the issuing and drawing of cheques, account withdrawals or fund transfers in excess of \$5,000 in value.
Such cheques, account transactions or fund transfers must be counter signed or authorised by another authorised officer who must, independently of the employee drawing the cheque, making account withdrawals or fund transfers, examine the supporting vouchers or requisitions or verify against an authorised payment list prepared and checked independently of the drawer of the cheque, or person making the account withdrawals or fund transfers.
- arising from **your** operation of or involvement in the conduct of any bank, building society, credit union, finance company, superannuation fund or banking business as defined in the Banking Act 1959 (Cth).
- fines, penalties compensation or damages including aggravated or exemplary damages for which the **insured** is legally liable.
- resulting or arising out of any cyber-attack or loss caused by a mechanical failure and/or programming error.
- damage or destruction of any land or buildings and/or fixtures and fittings thereon

40. Exclusions applicable to tax audit

Tax audit does not cover, and **we** are not required to make any payment directly or indirectly arising out of, attributable to or in connection with:

- amended notices/additional tax/fine/legal costs.
- the amount of any tax or other payment due or imposed by any amended notice of assessment including:
 - i) primary tax; or
 - ii) additional tax, duty, government impost; or
 - iii) fines, interest or **penalty** imposed;
- costs in legally pursuing or defending any legal action, proceeding or process in a court of law or tribunal against you which arise as a result of a **tax audit**.
- **APRA** audit or an audit conducted by **APRA**.
- all costs;
 - i) arising directly or indirectly from or in respect of any criminal prosecution arising as a result of a **tax audit**; or
 - ii) arising directly or indirectly from or in respect of any tax return lodged outside Australia, its states or territories;

- iii) incurred, that should have been incurred or that ordinarily would have been incurred for work done prior to or as part of the preparation of **your** accounts, returns, taxation and financial records prior to the lodgement of the **your** returns, taxation and financial records or any document required by the relevant legislation in connection with your returns.
- any **tax audit** where a return has been prepared lodged or submitted dishonestly or fraudulently, and where the supporting documents have been falsely created or collected.
- prior circumstances
 - i) any claim for professional fees under this automatic extension arising from any circumstances known to **you**, or any official, **employee**, or **volunteer** acting on **your** behalf, prior to the **period of insurance**; or
 - ii) verbal or written notice of an impending **tax audit** given to **you**, or any person or agent acting on **your** behalf, prior to the **period of insurance**; or
 - iii) a **tax audit** with a commencement date prior to the **period of insurance**.
- any **tax audit** where a return has been lodged on a date after the later of either:
 - i) 90 days after the lodgement date prescribed; or
 - ii) the date prescribed for lodgement by an authorised extension.
- any form of **managed investment**.
- professional fees which:
 - i) form part of an annual fixed fee or cost arrangement for taxation or accounting needs of **your** operations; or
 - ii) are incurred after the **tax audit** has been completed, including fees incurred in connection with any further review; or
 - iii) are ordinarily associated with the maintenance and upkeep of **your business** accounts, returns, taxation and financial records and the preparation prior to lodgement of accounts, returns, taxation and financial records as required by any relevant legislation.
- any routine enquiries, or enquiries from the **auditor**, which are not identified as being either preliminary to, or relating to a **tax audit** of a return.
- any **tax minimisation schemes**.

Conditions applicable to the policy

1. Allocation of costs

If a **claim** or **loss** is covered only partly by the **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 **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 the **policy** be regarded as part of the **defence costs**. The allocation shall apply also to payments made before the determination.

Any allocation or advancement on account of any amount under this **policy** will not create any presumption with respect to the final allocation of a claim or loss.

2. Assignment

The **policy** cannot be assigned by **you** or any **insured person** entitled to indemnity under the **policy**.

3. Authorisation clause

The persons, entities or organisations named as the insured in the **certificate of insurance** agree to act on behalf of all other persons, entities or organisations insured by this policy, and each of those other persons, entities or organisations agree that the persons, entities or organisations named as the insured in the **certificate of insurance** may act on their behalf with respect to the giving and receiving of any notice of cancellation, the payment of premiums, the receiving of any return premiums that may become due and the acceptance of **endorsements** or other notices provided for; and **you** warrant that these individuals and entities have authorised **you** to act on their behalf.

(other than those which derogate from the covers given under **Automatic extension 34 - dedicated excess limit of liability for insured person**).

4. Cancellation

You may cancel the **policy** at any time by notifying **us** in writing. **We** can cancel the policy in accordance with s.60 of the Insurance Contracts Act 1984 (Cth). In the event of cancellation, **we** will be entitled to retain premium for the period during which the **policy** has been in force.

5. Confidentiality

Neither **you** nor an **insured person** shall disclose the nature of the liabilities covered by the **policy** or the premium specified in the **policy**, unless required by law.

6. Governing law and jurisdiction

This insurance **policy** shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the State or Territory where the **policy** was issued. Any disputes shall be exclusively subject to determination by the courts of that State or Territory or of the Commonwealth of Australia.

7. Geographic limits

Except for **claims** arising under **Insuring clause 4 - Employment Practices**, **Insuring clause 6 - Statutory Liability**, **Automatic extension 28 - employee fidelity** and **Automatic extension 29 - third party fidelity**, the indemnity provided by the **policy** shall apply to **wrongful acts** occurring anywhere in the world; Provided always that indemnity does not extend to:

- 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;
- 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; or
- any country where **you** are required by the law of that country to have in force a local **policy** of insurance covering liability arising from any such **wrongful acts**.

For **claims** arising under **Insuring clause 4 - Employment Practices**, **Insuring clause 6 - Statutory Liability**, **Automatic extension 28 - employee fidelity** and **Automatic extension 29 - third party fidelity**, cover is restricted to **wrongful acts**, **employment practices breaches** and **direct financial losses** occurring within Australia.

8. Goods and Services Tax

Where **we** make a payment under the **policy** for the acquisition of goods, services or other supply, **we** will reduce the amount of the payment by the amount of any input tax credit that **you** or the **insured person** are or will be entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

Where **we** make a payment under the **policy** as **compensation** instead of payment for the acquisition of goods, services or other supply, **we** will reduce the amount of payment by the amount of any input tax credit that **you** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

If any **excess** applies to a liability or **loss** otherwise covered under the **policy** and **you** or the **insured person** are entitled to **claim** an input tax credit under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in respect of such liability or **loss** then the amount of that input tax credit shall not be taken to erode the **excess** for the purposes of the **policy**.

9. Investigatory costs and payments

Any costs incurred by **us** 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 **us** 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**.

The Policy: Management Liability Insurance

10. Legal enforceability

The **policy** or any of the indemnities set out are not operative or enforceable unless **our** agreement to provide such indemnity and the amount thereof is evidenced by a **certificate of insurance** or **endorsement** issued by **us** and signed on **our** behalf by an authorised person.

11. Merger or consolidation

If the **insured** merges or is consolidated with or becomes the subsidiary company of another entity during the **period of insurance**, **we** will continue to provide the indemnities available under the **policy** to you, **your** subsidiary companies and **insured persons**, until the expiry of the **period of insurance** or prior cancellation of the **policy** in respect of **wrongful acts** preceding the time of such merger, consolidation or acquisition.

12. Non-accumulation

Where **you** or an **insured person** are covered under the **policy** in respect of a **claim** or **loss** and are also entitled to cover under another insurance **policy** issued by **us** then **our** liability under the **policy** shall not be increased and **our** maximum liability under all such policies in the aggregate shall not exceed the highest **limit of liability** (and subject to any applicable aggregate limit) available under those policies in respect of such **claim** or **loss**.

13. Notice

Any provision of the **policy** requiring notices and communications to be given in writing will be deemed to be complied with if delivered to the recipient electronically.

14. Payment of premium

You must pay the premium specified in the **certificate of insurance** within 30 days of the inception of the **policy** or such other time as **we** agree in writing. If **you** fail to pay the premium within that period, **we** are entitled to cancel the **policy** in accordance with the Insurance Contracts Act 1984 (Cth).

15. Severability and non imputation

In determining cover under the **policy**:

- the written **proposal** shall be construed to be a separate application for cover by **you** and by each of the **insured persons**. No statement or representation in or with respect to the **proposal** by an **insured person** shall be imputed to any other **insured person**;
- no breach of any term or condition of the **policy** or other misconduct by any **insured person** shall be imputed to any other **insured person**;
- no fact or knowledge possessed by one **insured person** shall be imputed to any other **insured person**; and
- 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 **insured**.

16. Sanctions

We shall not be required to perform any transaction to pay any **claim** or provide any benefit hereunder to the extent that the execution of such transaction would contravene any sanction, prohibition or restriction applicable to **us** under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, United States of America, European Union or United Kingdom. This clause shall not in any way limit **our** liability to pay such a **claim** or provide such benefit, if and when such sanction, prohibition or restriction is lifted and/or altered and the transaction may be performed without contravention of same.

Claims conditions and procedures applicable to the policy

1. Additional parties

We agree that where this **policy** insures more than one party, any failure on the part of any of the parties to:

- comply with the duty of disclosure under the Insurance Contracts Act 1984 (as amended or replaced); or
- comply with any obligation under this **policy** (other than the obligation to pay premium); or
- refrain from conduct which is dishonest, fraudulent, criminal or malicious; or
- refrain from making a misrepresentation,

shall not prejudice the right of the remaining party or parties to indemnity under this **policy**, provided that such remaining party or parties shall:

be entirely innocent of and have had no prior knowledge of any such failure; and

as soon as practicable after becoming aware of any such failure, advise us in writing of all its relevant circumstances.

Where this **policy** insures more than one party, it shall apply to each party in the same manner as if a separate **policy** had been issued to each of them, provided that, in so doing, **our limit of liability** or the sum insured shown in the **certificate of insurance** in respect of any one event or **claim** (and any **aggregate limit of liability** that may be applicable) for the **period of insurance** shall not be increased.

We agree to waive all rights of subrogation or action which we may be entitled to against any party to whom cover under this **policy** extends.

2. Other insurance

If at the time any **claim** arises under the **policy** there is any other insurance in force covering the same liability, **you** must promptly notify **us** of the full details of such other insurance, including the identity of the **insurer** and the **policy** number, and such further information as **we** may reasonably require.

3. Subrogation

- i) If any payment is made under the **policy** in respect of a **claim**, **we** will be subrogated to all **your** rights and will be entitled to pursue and enforce such rights in **your** name and **you** are required to provide **us** with all reasonable assistance and co-operation.
- ii) In respect of **Automatic extensions 28 - employee fidelity** and **29 - third party fidelity** **we** may at any time and at **our** own expense exercise **our** rights of subrogation against any **third party** or **employee** where it has been found they have committed **dishonest acts** resulting in a **direct financial loss** that **we** have paid or will be liable to pay under the **policy**.

4. Notification of claims

You must notify **us** in writing of any **claim** made against **you** during the **period of insurance** and forward to **us** every letter of demand, originating process (whether by way of writ, summons, statement of **claim**, **third party** notice, counter**claim** or cross **claim**), notice of any **prosecution**, inquiry, **investigation** or inquest which **you** receive as soon as practicable after the **claim** has been made.

All notices to **us** under any provisions of the **policy** must be given in writing to: GPO Box 1655 Melbourne VIC 3001 or email to insure@ansvar.com.au

5. Mitigation

You are required, at **your** expense, to use all due diligence and take all reasonable steps to minimise any **claim** and to prevent further **claims** arising out of the same or similar conditions and avoid or diminish any **loss** hereunder.

6. Settlement of claims, co-operation and conduct of proceedings

You must not make any admission of liability, offer, and promise of payment, take any action that may be considered to be an admission of liability, settle or repudiate a **claim** or incur any costs and expenses without **our** prior written consent, such consent which cannot be unreasonably withheld.

We will have discretion, after taking into consideration **your** interest and preference, in the conduct and defence, in **your** name and on **your** behalf (including to take over and conduct), of any proceedings in connection with, and in the settlement of any **claim** and **you** shall give all such information and assistance as **we** may require.

You shall as soon as reasonably practicable give all such information and assistance to **us** as **we** may reasonably require to enable **us** to investigate and to defend the **claim** and/or to enable **us** to determine **our** liability under the **policy**.

We may take whatever reasonable action that **we** consider appropriate in respect of the **claim** against **you** and such action by **us** will not be regarded in any way prejudicing **our** position under the **policy** and no admission of the entitlement to indemnity under the **policy** shall be implied.

We will be entitled to attend any **investigation** or fatal accident inquiry in respect of which there may arise any liability under the **policy**.

7. Senior counsel

Neither **we** nor **you** shall be required to contest or settle a **claim** unless a **senior counsel** shall advise such a **claim** should be contested or settled. In formulating his or her advice, the **senior counsel** must have regard to **your** prospects of successfully defending the **claim**, the likely damages awarded and costs recovered by the **claimant**, and the likely **defence costs** associated with the **claim**.

We may nominate a **senior counsel** to provide the advice and **you** must notify **us** if **you** agree to the appointment of the individual nominated. If **you** do not agree to the appointment within a reasonably practicable time, **senior counsel** will be appointed by the president of the relevant bar association in the state or territory in which the **claim** has been made.

The costs of **senior counsel** are included in the **defence costs** in respect of the **claim**.

The Policy: Management Liability Insurance

8. Election to contest claim

If **you** refuse to consent to any settlement recommended by **us** and elect to contest or continue any legal proceedings in connection therewith, **our** liability for the **claim** shall not exceed the amount for which the **claim** could have been so settled, less the applicable **excess**, plus **defence costs** incurred up to the date of such refusal.

9. Changes

Every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date, must be notified to us in writing immediately after such change comes to the notice of the persons, entities or organisations named as the insured in the **certificate of insurance**. We will advise **you** in writing if an additional excess, additional premium or additional terms or conditions are applied to your policy.

To continue to be covered **you** must agree to pay any additional premium we may require.

We may also decide to cancel the policy, if permitted, in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) and return any refund of premium to you.

If the insured person does not notify us of a material change, you may not be covered under your policy or we may reduce the amount that we are liable to pay you.

10. Fraudulent claims

As a protection for all insurance **policy** holders **we** reserve the right to take legal action against any person who makes a fraudulent **claim**.

If a fraudulent **claim** is made **we** will not pay it and **we** will take action to recover any **moneys** already disbursed in respect of the **claim**. **We** will also cancel the **policy**.

11. Notification of direct financial loss

You, as a condition precedent to **our** obligations under this **policy**, give written notice to **us** of any **direct financial loss** as soon as reasonably practicable within the **period of insurance**, or within the **discovery period** if applicable, but in any event not later than 60 days after any **direct financial loss** is first **discovered**. **we** can consider extending this period upon **your** request and **our** decision will not be unreasonably withheld. **You** may offer a comparison between **your** inventory records and actual physical counts of its inventory to prove the amount of **loss** only where **you** establish that, wholly apart from such comparison, **you** have sustained a covered **loss** caused by an **employee**.

The **insured** must, at its own cost, also:

- i) provide **us** with affirmative proof of the **direct financial loss** with full particulars within six months of the **direct financial loss** being first **discovered**. **We** can consider extending this period upon **your** request and **our** decision will not be unreasonably withheld, and
- ii) provide **us** with all requested information and documents and co-operate with **us** in a reasonable manner on matters pertaining to the **direct financial loss**.

12. Basis of valuation of direct financial loss

For any **direct financial loss** covered under this **policy**, **we** are not liable for more than:

- i) the actual market value of **securities** and **money** at the close of **business** on the day the **direct financial loss** was first **discovered** (determined by the value published in the Australian Financial Review), or the actual cost of replacing **securities** and **money**, whichever is less;
- ii) the actual cash value of other **property** (not referred to in (i) above) at the close of **business** on the day the **direct financial loss** was first **discovered**, or the actual cost of replacing the **property** of like quality or value, whichever is less;
- iii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of **data** furnished by the **insured** in order to reproduce books of account and other records.

13. Settlement of direct financial loss

If the **insured** notifies **us** of a **direct financial loss** and **we** accept the notification under this **policy**, subject to the **insured's** compliance with Exclusion 13 - known **claims** or prior acts above, a **loss** adjustor will be appointed by **us** to establish proof of any element or part of the **direct financial loss** not yet accepted by **us**.

The **loss** adjustor shall:

- i) investigate the facts behind such unproven **direct financial loss**; and
- ii) determine the quantum of such unproven **direct financial loss**, and
- iii) advise when and how the **insured's** controls were or may have been breached; and
- iv) provide recommendations which may prevent future similar **direct financial loss**; and
- v) issue their findings in a report format approved by **us**; and
- vi) provide a copy of the report to the **insured** to **us**.

The report of the **loss** adjustor will not be binding and definitive as to the facts and quantum of such unproven **direct financial loss**.

We will pay for the reasonable and necessary fees, costs and expenses of the **loss** adjustor provided the unproven **direct financial loss** is ultimately determined to be covered under this **policy**. If that part of the **direct financial loss** is determined not to be covered under this **policy**, the **insured** will pay the said fees, costs and expenses of the **loss** adjustor.

Any amount of the **loss** adjusting fees paid by **us** under this section of the **policy** will be paid in addition to the **limit of liability**, and will not be the subject of any **excess**.



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