



directors & officers liability

insurance policy



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In consideration of the payment of the premiums stated in Item 7 of the schedule, the **Insurer** will provide the indemnities set out in the **Policy** in accordance with the terms and conditions expressed.

Section 1 Operative Clause

Directors and Officers Liability Insuring Agreement A

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

Corporate Reimbursement Insuring Agreement B

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

The total amount payable in respect of all **Claims** under Insuring Agreement A and/or Insuring Agreement B and/or the Extensions of this **Policy**, shall not in the aggregate exceed the limit of aggregate liability as stated in Item 5 of the schedule.

Section 2 Extensions

Unless expressly specified to the contrary, the cover granted by these extensions is subject to all the terms and conditions of this **Policy**.

Automatic Extensions

2.1 Advancement of Defence Costs

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

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

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

2.2 Extended Reporting Period

If the **Insurer** refuses upon request to offer any renewal terms and conditions during the **Period of Insurance**, the **Corporation** and the **Insured Persons** shall collectively (but not separately) have the right upon payment of an amount equal to 50% of the total expiring annual premium stated in Item 7 of the schedule to a once-only extension of the **Policy** for a further 12 months immediately following the expiry of the **Period of Insurance** but only for any **Wrongful Act** committed or alleged to have been committed or attempted prior to the expiry of the **Period of Insurance**, provided always that the right to this extension is exercised prior to the expiry of the **Period of Insurance**.

2.3 Estates & Legal Representatives

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

2.4 Spousal Liability Cover

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

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

2.5 Insured vs Insured Cover

The **Insurer** will pay on behalf of the **Insured Persons** any **Claim** brought by:

1. an employee for **Loss** due to:
 - a. discrimination against any employee, or applicant for employment whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
 - b. wrongful dismissal of any employee ;
 - c. workplace harassment (whether sexual or otherwise) of an employee ;
 - d. breach of an implied term of an oral or written employment contract;
 - e. wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an employee;
 - f. wrongful refusal to employ an applicant;
 - g. defamation arising from employment related matters;
 - h. misleading misrepresentation or advertising as to the terms and conditions of employment; or
 - i. denial of natural justice to an employee concerning employment.

Provided always that:

For the purposes of this Extension only "employee" shall mean principals, partners, directors, officers and employees of the **Insured**, voluntary workers, contract or temporary workers.

2. an **Insured Person** for contribution or indemnity, if the **Claim** results directly from another **Claim** covered by this **Policy**;
3. a shareholder of the **Corporation** in his/ her/ its own right or on behalf of the **Corporation**.
Provided always that such shareholder:

- a. was not a director, officer or employee of the **Corporation** at the time of the **Wrongful Act** and had not been directly or indirectly involved in any process which led to the **Wrongful Act** whilst previously acting as a director, officer or employee of the **Corporation**;
 - b. is acting without any direct or indirect solicitation, enticement or co-operation (other than co-operation legally required by any statutory or regulatory authority) from any **Insured Person**.
4. any regulatory authority on behalf of the **Corporation**. Provided always that such regulatory authority is acting without any direct or indirect solicitation, enticement or co-operation (other than co-operation legally required by any statutory or regulatory authority) from any **Insured Person**.
 5. any court appointed liquidator, receiver, receiver and manager, official manager, administrator or trustee administering a compromise or scheme of arrangement of the **Corporation**.

Where a conflict arises between this extension and Exclusion 3.4 (Insured vs Insured) of this **Policy**, the provisions of this extension shall prevail.

2.6 Attendance at Official Investigations or Inquiries

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

2.7 Occupational Health & Safety

Notwithstanding Exclusion 3.4 (*Insured vs Insured*) and 3.6(1) (*Bodily Injury*), the **Insurer** will provide indemnity for **Defence Costs** in respect of any **Claim** (other than a civil claim for compensation or a **Claim** otherwise excluded) for breach of occupational health and safety laws.

2.8 Continuity of Cover

Notwithstanding Exclusion 3.2 of this **Policy**, the **Insurer** will indemnify any **Insured Person**, for any **Claim** otherwise covered by this **Policy**, arising from a **Known Circumstance** if:

1. there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and

2. the **Insurer** was the Directors & Officers Liability insurer of the **Insured Person** when the **Insured Person** first knew of such **Known Circumstance**; and
3. the **Insurer** continued thereafter, without interruption, to be the Directors & Officers Liability insurer of the **Insured Person** up until this **Policy** came into effect; and
4. had the **Insurer** been notified by the **Insured Person** of the **Known Circumstance** when the **Insured Person** first knew of it, the **Insured Person** would have been indemnified under the policy in force at that time but is now not entitled to be covered by that policy and the **Insured Person** would have (but for Clause 3.2 of this **Policy**) otherwise been covered by this **Policy**; and
5. neither the **Claim** nor **Known Circumstance** have previously been notified to the **Insurer** or to any other insurer.

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

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

2.9 New Subsidiaries

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

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

1. Notification of such **Subsidiary Company** shall be given in writing to the **Insurer** within 60 days after such acquisition or creation; if notification is not given to the **Insurer** within 60 days after the acquisition or creation, cover will cease at 4.00 p.m. 60 days after the acquisition or creation.
2. The **Insurer** may in its discretion, provide cover for such **Subsidiary Company** subject to such additional terms and/or premium.

2.10 Run-Off Cover for Subsidiaries

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

2.11 Preservation of Indemnity

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

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

2.12 Current Outside Directorships (Non-Profit Organisations)

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

1. Such indemnity will not extend to any of the other directors or officers (by whatever name called) of the said **Non-Profit Organisation** who are not also **Insured Persons** of the **Corporation**.
2. No indemnity whatsoever is available to the said **Non-Profit Organisation** under Insuring Agreement B.
3. For the purpose of applying Extension 2.5 (*Insured vs. Insured Cover*) to this cover and for no other purpose, the term '**Corporation**' will be deemed to include the said **Non-Profit Organisation**.
4. Cover under this extension shall apply in excess of any similar insurance held by said **Non-Profit Organisation**.
5. Cover under this extension shall be non-cumulative with any other insurance issued by the **Insurer**.

2.13 Limited Prospectus Liability

The **Insurer** will provide indemnity to an **Insured Person** by reason of a **Wrongful Act** for liability arising out of rights issues, bonus share issues, employee share options, dividend reinvestment plans, convertible notes and redeemable preference issues. Cover is not provided for liability arising out of an initial public offering.

2.14 Run-Off Cover For Outside Directorships

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

1. The **Wrongful Act** giving rise to a **Claim** occurred before the **Insured Person** ceased holding such position.
2. The **Outside Directorship** had previously been or is already covered by the **Insurer** under previous policies or this **Policy**.
3. The provisions under Extension 2.12 (*Current Outside Directorships (Non-Profit Organisations)*) or Extension 2.17 (*Current Outside Directorships (other than Non-Profit Organisations)*) of this **Policy** will apply to this run-off cover.

2.15 Joint Venture Cover

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

Optional Extensions

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

Other than Optional Extension 2.16, the following Optional Extension shall not operate to increase the **Insurer's** limit of aggregate liability as stated in item 5 of the schedule.

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

2.16 Reinstatement of Aggregate Limit

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

1. The reinstatement shall not apply to an existing **Claim** on which a **Loss** payment has been made, or to a subsequent **Claim** brought in respect of an event, or of an event related to an event, in respect of which a **Loss** payment had been made by the **Insurer** under another **Claim** before reinstatement.
2. If the **Insured Persons** have extra insurance in excess of this **Policy**, then the reinstatement shall not apply until the extra insurance has been exhausted.

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

The **Insurer** will provide indemnity for **Outside Directorships** which an **Insured Person** holds at the commencement of the **Period of Insurance** in any **Organisation** stated in Item 9 of the schedule, provided always that the provisions under Extension 2.12 (*Current Outside Directorships (Non-Profit Organisations)*) will apply to this extension save for the change in reference from **Non-Profit Organisation** to **Organisation**.

However, cover is automatically available for **Outside Directorships** entered into during the currency of this **Policy** for a period of 60 days from the commencement of appointment of the **Outside Directorship**.

For cover beyond the period of 60 days, notification of the appointment is to be given in writing to the **Insurer**, which has the right to ask for additional information and to charge an additional premium.

If notification is not given to the **Insurer** within 60 days after the appointment and if any additional information and/or additional premium as requested by the **Insurer** is not provided, cover will cease at 4.00 p.m. 60 days after the appointment.

2.18 Prospectus Liability - Initial Public Offering

Notwithstanding Exclusion 3.5 (*Prospectus Liability*), where this optional extension applies, the **Insurer** will provide indemnity to the **Insured Persons** for liability arising out of the issue of any initial public offering of securities of the **Corporation**.

2.19 USA & Canadian Jurisdiction

Notwithstanding Condition 4.17 (*Territory & Jurisdiction*), the **Insurer** will provide indemnity for the **Insured Persons** for liability in respect to any **Claim** first brought against the **Insured Persons** in a court of law in the United States of America or Canada or their Territories or Protectorates, or brought in a court outside those countries or territories to enforce judgement handed down in a court within those countries or territories whether by way or reciprocal agreement or otherwise.

Provided always that such indemnity shall not apply to any Claim or Loss:

1. Arising from or based upon any actual or alleged violation of the Securities Act 1933, the Securities Exchange Act 1934, any rules or regulations adopted thereunder, any like federal, state or provincial statute in the United States of America or Canada, regulating securities similar to the foregoing, any rules or regulations adopted pursuant thereto, or as they may be amended or any other state, provincial or common law of the United States of America or Canada relating to securities.
2. Arising from or based upon any provisions of the Employee Retirement Income Security Act 1974 and all amendments thereto and regulations concerning pension, profits sharing or employee benefit programmes arising under federal, state, local laws or common law or which relate in any way thereto.
3. Arising from or based upon any actions or proceedings or developments thereof arising directly or indirectly from the Anti-Trust Laws of the United States of America or Canada.
4. Arising out of the enforcement of judgements, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates with respect to Optional Extension 2.20 (Entity Cover for Employment Practices Liability) and/ or Optional Extension 2.22 (Pollution Defence Costs).
5. Which would involve a payment under Optional Extension 2.16 (Reinstatement of Aggregate Limit).

2.20 Entity Cover for Employment Practices Liability

The **Insurer** will pay on behalf of the **Corporation** that **Loss** the **Corporation** is legally obliged to pay, as an employer, by reason of any **Claim** first made against the **Corporation** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period** for:

1. discrimination against any employee, former employee or applicant for employment whether because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
2. wrongful dismissal of any employee ;
3. workplace harassment (whether sexual or otherwise) of an employee ;
4. breach of an implied term of an oral or written employment contract;
5. wrongful demotion, failure to promote, wrongful deprivation of career opportunity,

wrongful discipline, negligent evaluation or failure to grant tenure of employment to an employee;

6. wrongful refusal to employ an applicant;
7. defamation arising from employment related matters;
8. misleading misrepresentation or advertising as to the terms and conditions of employment; or
9. denial of natural justice to an employee concerning employment.

Provided always that:

- a. this extension is subject to the deductible specified under Item 6(3) of the schedule.
- b. for the purpose of this extension reference in the **Policy** to any **Insured Person** shall be construed, as appropriate, as a reference to the **Corporation**.

For the purposes of this extension only "deductible" may include a co-insurance percentage for which the **Corporation** is liable, subject to a minimum deductible.

For the purposes of this Extension only "employee" shall mean principals, partners, directors, officers and employees of the **Insured**, voluntary workers, contract or temporary workers.

2.21 Pre-Acquisition Liability

Notwithstanding the proviso to Section 5.15 (*Subsidiary Company*) of this **Policy**, the **Insurer** will indemnify the **Insured Persons** of any **Subsidiary Company** stated in Item 9 of the schedule for **Wrongful Acts** preceding the acquisition of that **Subsidiary Company** by the **Corporation**.

2.22 Pollution Defence Costs

Notwithstanding Exclusion 3.9(1), the **Insurer** will indemnify the **Insured Persons** for **Defence Costs** incurred in respect of any **Wrongful Act** resulting in **Loss** arising out of the discharge, dispersal, release or escape of pollutants. The maximum payment under this extension shall not exceed \$1 million in the aggregate. Cover is not provided for **Wrongful Acts** occurring in the United States of America, the Dominion of Canada or their Territories or Protectorates.

2.23 Multi-Year Run-Off after Merger or Consolidation

If the **Corporation** merges or is consolidated with or becomes the **Subsidiary Company** of another company, or sells all or substantially all its assets to another entity, the **Corporation** and any **Insured Person** shall have the option to extend the **Period of Insurance** up to 7 years immediately following the expiry of the **Period of Insurance** but only for any **Wrongful Act** committed or alleged to have been committed or

attempted prior to the date of such sale, merger, or consolidation provided always that the right of the extension is exercised within 30 days of the expiry date of the **Period of Insurance**.

In the event this optional extension is exercised, the **Corporation** and any **Insured Person** shall not be entitled to any further extension beyond the **Period of Insurance** under section 2.2 (Extended Reporting Period) of this **Policy**.

Section 3 Exclusions

This **Policy** does not provide an indemnity for any **Loss** arising out of any **Claim**, or for **Defence Costs** incurred pursuant to Section 2.6:

3.1 Dishonesty & Fraud

brought about by, contributed to by or which involves:

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

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

3.2 Known Claims & Circumstances

1. known as at the inception date of this **Policy**;
or
2. arising from a **Known Circumstance**
3. directly or indirectly based upon, or attributable to, or in consequence of any such **Known Circumstance**.

3.3 Breach of Professional Duty

arising from:

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

3.4 Insured vs Insured

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

3.5 Prospectus Liability

arising from the issue of initial public offering of securities of the **Corporation**.

3.6 Bodily Injury & Property Damage

arising from:

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

3.7 Date Recognition

arising from or in respect to the use in any way:

1. by the **Corporation**; or
2. by any supplier, past, present or future, of services or products to the **Corporation**;
of any computer program, software products, computer data processing equipment or media, microchip, programmed logic controllers, integrated circuit or any electronic equipment which fails to:
 - a. correctly recognise any date as its true calendar date; or
 - b. capture, save or retain and/or correctly manipulate, interpret, or process any data, information, command or instruction as a result of treating any date otherwise than as its true calendar date; or
 - c. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes a loss of data or the inability to capture, save, retain or correctly process such data on or after any date; or
 - d. otherwise fails to correctly or effectively provide for the change of date when the Year 1999 concluded and the Year 2000 commenced.

Further, this policy does not provide an indemnity against any **Claim** made against any **Insured Person** arising from or in respect to any duty owed by such **Insured Person** in respect of any issue related to Year 2000 conformity as defined in the Standards Australia/ Standards New Zealand SAA/SNZ MP 77 document.

Notwithstanding anything contained to the contrary in Extension 2.8 of this **Policy** (Continuity of Cover), the indemnity provided by that Extension is subject to this Date Recognition Exclusion.

3.8 Fines and Penalties

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

3.9 Pollution, Nuclear Risks, War & Terrorism

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

1. Pollution or contamination howsoever and wheresoever occurring. For the purpose of this **Policy**, the term Pollution shall have the meaning ascribed to it in the Protection of the Environment Operations Act 1997 No 156 (NSW).
2. Atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
 - a. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
 - b. the use, handling or transportation of radioactive materials; or
 - c. the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

Provided always that this Exclusion shall not apply to any Claim arising from radio-isotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

3. War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority, except to the extent that such an order arises as a result of any Wrongful Act committed by any Insured Person.
4. a. any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense.
b. any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

3.10 Asbestos

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

Section 4 General Conditions

3.11 Additional Exclusions applying to Extension 2.5(1) (Insured vs Insured Cover) and Extension 2.20 (Entity Cover for Employment Practices Liability)

made under Extension 2.5(1) (Insured vs Insured Cover) and Extension 2.20 (Entity Cover for Employment Practices Liability):

1. Unfair Contracts

For or in respect of:

- a. A contract of employment alleged to be unfair.
- b. The seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.

2. Workers' Compensation

In relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation.

3. Physical Modification

For the cost of physical modifications to premises, plant or equipment owned or occupied by the **Corporation**.

4. Industrial Disputes

Brought about by, contributed to by or which involves industrial disputes (whether between the **Corporation** or the **Insured Persons** or between employees or their union or generally), strike, picket, lockout, go slow or work to rule.

4.1 Authorisation Clause

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

4.2 Severability & Non-Imputation

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

1. The written proposal shall be construed to be a separate application for cover by each of the **Insured Persons** and no statement or representation in or with respect to the proposal by an **Insured Person** shall be imputed to any other **Insured Person**.
2. This **Policy** shall, subject to General Condition 4.10 (*Non-Accumulation*), be construed to be a separate policy between the **Insurer** and each **Insured Person** and no breach of any term or condition of this **Policy** or other misconduct by any **Insured Person** shall be imputed to any other **Insured Person**.
3. No fact or knowledge possessed by one **Insured Person** shall be imputed to any other **Insured Person**.

4.3 Merger or Consolidation

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

4.4 Claims Co-operation

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

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

4.5 Allocation

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

4.6 Court Jurisdiction

It is further understood that this **Policy** shall be governed by the law of the State or Territory where this **Policy** was issued and whose courts shall have jurisdiction in any dispute arising under or in connection with or in respect of the provisions of indemnity under this **Policy**. For the purpose of this condition, the place of issue stated in Item 12 of the schedule shall be conclusive.

4.7 Deductibles

The amount of relevant deductible stated in Item 6 of the schedule shall be applied to each and every **Claim** brought under Insuring Agreement A or Insuring Agreement B of this **Policy**.

Where the same **Wrongful Act** results in more than one **Claim** being made against the **Insured Person/Corporation** then only one deductible shall apply to any such **Claim** covered by this **Policy**. In the event of a **Claim** being based on separate, different or multiple **Wrongful Acts**, then the relevant deductible shall apply in respect of each **Wrongful Act**.

4.8 Aggregate Liability

The **Insurer** shall only be liable to provide indemnity to the extent of the amount of the limit of aggregate liability stated in Item 5 of the schedule.

Any **Loss** arising out of all interrelated **Wrongful Acts** of any **Insured Person** shall be deemed one **Loss** and such **Loss** shall be deemed to have originated in the earliest **Period of Insurance** in which a **Claim** is made against any **Insured Person** by reason of any **Wrongful Act**.

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

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

4.9 Paragraph Headings

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

4.10 Non-Accumulation

The inclusion in this **Policy** of more than one (1) **Insured Person** shall not operate to increase the **Insurer's** limit of aggregate liability stated in Item 5 of the schedule.

4.11 Notice

Any notice required to be given under this **Policy** to the **Insurer** shall be validly and lawfully given if it is given to the **Insurer** in writing at the address or to the facsimile number stated in Item 11 of the schedule.

4.12 Confidentiality

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

4.13 Gender & Number

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

4.14 Senior Counsel Clause

Neither an **Insured Person** nor the **Insurer** shall be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (mutually agreed upon by the **Insured Person** and the **Insurer** or in default of such agreement, selected by the Chair Person or President of the local Bar Council) shall advise that such proceedings should be contested. In formulating his or her advice, Counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of the **Insured Person** successfully defending the action.

The costs of such Counsel's opinion shall, for the purpose of this **Policy**, be regarded as part of the **Defence Costs**. In the event that Counsel advises

that, having regard to all the circumstances, the matter should not be contested but should be settled, providing settlement can be achieved within certain limits which, in Counsel's opinion, are reasonable, then the **Insured Person** shall not object to any such settlement and shall co-operate with the **Insurer** to effect such settlement in accordance with this **Policy**.

4.15 Settlement Procedure

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

4.16 Subrogation

In the event of any payment by the **Insurer** for a **Loss** under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment of all rights of an **Insured Person's** recovery thereof and the **Insured Person** shall execute all papers required and do everything that may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured Person** except that all right of subrogation under this **Policy** is waived against:

1. the **Corporation** unless indemnity is granted under Extension 2.11 (*Preservation of Indemnity*) of this **Policy**;
2. any **Insured Person** to whom protection is afforded under this **Policy**.

Provided always that:

- a. if such **Insured Person** is protected from such **Loss** by any other collectable policy of insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy;
- b. the **Insurer** does not waive any right of recovery of any deductible stated in Item 6 of the schedule as applied in accordance with this condition.

4.17 Territory and Jurisdiction

1. The indemnity provided by this **Policy** extends to **Wrongful Acts** occurring anywhere in the world.
2. The indemnity provided by this **Policy** extends to **Claims** made anywhere in the world, except:
 - a. actions brought in or determined pursuant to the law of, the United States of America or the Dominion of Canada, or their Territories or Protectorates; or
 - b. any **Claim** arising out of the enforcement of judgements, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates.

4.18 Other Insurance

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

4.19 Cancellation

1. The Corporation Can Cancel the Policy

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

2. The Insurer can cancel the Policy

- a. under Section 60 of the Insurance Contracts Act 1984, the **Insurer** may cancel this **Policy** at any time by giving notice in writing to the **Corporation** of the date from which cancellation is to take effect where the **Corporation** has:
 - i. failed to comply with the duty of utmost good faith; or
 - ii. failed to comply with the duty of disclosure at the time when this **Policy** was entered into, varied, altered, or renewed; or
 - iii. made a misrepresentation to the **Insurer** during the negotiations for this **Policy**, but before the **Insurer** agreed to issue this **Policy**; or

Section 5 Definitions

- iv. failed to comply with a provision of the **Policy**; or
 - v. failed to pay the premium for this **Policy**; or
 - vi. made a fraudulent claim under this **Policy**; or any other contract of insurance (whether with the **Insurer** or another insurer) that provided cover during any part of the **Period of Insurance** of this **Policy**; or
 - vii. failed to comply with a requirement in this **Policy** to notify of an act or omission which occurred after this **Policy** was entered into; or
 - viii. failed to notify **Insurer** of any specific act or omission or such notification as required under the terms of this insurance **Policy**.
- b. under Section 60 of the Insurance Contracts Act 1984, the **Insurer** may cancel this **Policy** at any time where:
- i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
 - ii. it is an interim contract of general insurance.
- c. after cancellation pursuant to Clause 4.19, the **Insurer** will refund the premium for the time remaining on the **Policy**, less any nonrefundable duties, unless the **Corporation** or an **Insured Person** has made a fraudulent claim under the **Policy**.

4.20 Legal Enforceability

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

4.21 Goods and Services Tax

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

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

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

- 5.1 Claim** means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim alleging any **Wrongful Act** or proceedings referred to in Extension 2.6, which is both issued against and served upon any **Insured Person** who is entitled to indemnity under this **Policy**.
- 5.2 Corporation** means the **Corporation** stated in Item 1 of the schedule and shall be deemed to include all its **Subsidiary Companies**.
- 5.3 Defence Costs** means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any **Insured Person**) incurred with the prior written consent of the **Insurer** in defending any **Claim** or incurred pursuant to Extension 2.6.
- 5.4 Insured Person** means:
1. any natural person who was or now is or may hereafter become a director, secretary, executive officer or employee of the **Corporation** by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position; or
 2. any natural person who by virtue of any applicable legislation, is deemed to be a director, secretary, executive officer or employee of the **Corporation**.
- Insured Person** does not mean a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of the **Corporation** or any employee of such person; or any company, entity or other body corporate or trustee, directors, officers, or employees of superannuation or pension organisation.
- 5.5 Insurer** means CGU Professional Risks Insurance, a division of CGU Insurance Limited ABN 27 004 478 371.
- 5.6 Indemnity Period** means the **Period of Insurance** and the Extended Reporting Period if Extension 2.2 (*Extended Reporting Period*) is in force.

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

5.8 Known Circumstance means any fact, situation or circumstance which:

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

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

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

In respect of Extensions 2.5 (Insured vs Insured Cover) and 2.20 (Entity Cover for Employment Practices Liability) this **Policy** will include back-pay where reinstatement of an employee by a court is ordered but excludes any amount which the **Corporation** is or was required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.

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

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

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

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

5.14 Policy means:

1. All the terms, conditions, definitions, exclusions and limitations contained herein.
2. The schedule.
3. Any endorsements attaching to and forming part of this **Policy**, either at inception or during the **Indemnity Period**.

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

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

5.16 Terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

1. involves violence against one or more persons; or
2. involves damage to property; or
3. endangers life other than that of the person committing the action; or
4. creates a risk to health or safety of the public or a section of the public; or
5. is designed to interfere with or to disrupt an electronic system.

5.17 Wrongful Act means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act done or attempted by or any other matter claimed against any **Insured Person** or any of them wherever or whenever while acting in their individual or collective capacities as an **Insured Person**.

Section 6

The way we handle your personal information

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims.

You can choose not to provide this information, however, we may not be able to process your requests.

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

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

General Insurance Code of Practice

CGU Insurance proudly supports the General Insurance Code of Practice.

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

The objectives of the Code are:

to promote better, more informed relations between insurers and their customers;

to improve consumer confidence in the general insurance industry;

to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and

to commit insurers and the professionals they rely upon to higher standards of customer service.

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

Our service commitment

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

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

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

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

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

Intermediary Remuneration

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

Notes

contact details

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