



ASR | Underwriting
Agencies

Policy Wording

MANAGEMENT LIABILITY

Directors & Officers
Liability Insurance

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 291522



ASR Underwriting Agencies

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Important Information

This is a "claims-made" insurance which covers only Claims notified to the Underwriters during the Period of Insurance. The use of italic and bold text together in this Insurance indicates that the word or phrase in bold italics is defined under Section 2) – Definitions. The use of bold text alone indicates that the word or phrase is a title or sub-title. The titles or sub-titles in this Insurance are for ease of reference only and shall not affect its interpretation

In consideration of the payment of the premium set forth in Item 11 of the Schedule and in reliance on the statements made and information contained within the Proposal Form and subject to the terms and conditions of this Insurance and after the exhaustion of all other indemnification available to the Directors or Officers or the Employees or the Company from any other source including any other policy of insurance, the Underwriters will:



Insuring Clauses

1. INSURING CLAUSES

1.1. Directors' and Officers' Liability

pay on behalf of any Director or Officer Loss (other than Loss payable under any other Insuring Clause) arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as a Director or Officer;

1.2. Company Reimbursement

pay on behalf of the Company Loss arising from any Claim first made against any Director or Officer during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as a Director or Officer;

1.3. Employment Entity Liability (This Insuring Clause will only be effective if shown as "Applicable" in Item 6 (a) of the Schedule)

pay on behalf of the Company Loss (other than Loss payable under any other Insuring Clause) arising from any Claim (other than any United States Claim) first made against the Company during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Employment Wrongful Act committed by the Company;

1.4. Entity Cover (This Insuring Clause will only be effective if shown as "Applicable" in Item 6 (b) of the Schedule)

pay on behalf of the Company Defence Costs (other than Defence Costs payable under any other Insuring Clause) which the Company are legally liable to pay as a result of a Claim (other than any United States Claim) first made against the Company during the Period of Insurance and notified to the Underwriters during the Period of Insurance alleging a Wrongful Act committed by the Company;

1.5. Fiduciary Liability (This Insuring Clause will only be effective if shown as "Applicable" in Item 6 (c) of the Schedule)

pay on behalf of the Directors and Officers and the Company Loss (other than Loss payable under any other Insuring Clause) for which any or all of the Directors and Officers and the Company are legally liable to pay as a result of a Claim (other than any United States Claim) first made against one or more of them during the Period of Insurance and notified to the Underwriters during the Period of Insurance alleging a Fiduciary Wrongful Act committed by one or more of them.



Definitions

2. DEFINITIONS

All definitions within this Insurance shall have the same meaning whether expressed in the singular or the plural.

2.1. **Benefit Program** means any employee benefit plan or registered pension plan or group sickness or accident insurance plan or private health services plan or supplementary unemployment benefit plan or profit-sharing plan or sickness or accident or disability plan or income maintenance insurance plan or vacation pay trust or employee trust or retirement compensation arrangement or salary deferral arrangement (other than any incorporated or registered or domiciled in the United States of America or established for the exclusive benefit of natural persons who are resident in, or are citizens of, the United States of America) as defined within the laws of Australia and both created and Managed by the Company for the benefit of the Directors and Officers or the Employees or both.

2.2. **Claim** means:

2.2.1. a written notice received by a Director or Officer (or the Company in the case of Insuring Clauses c), d) or e) if applicable) for a demand for compensation or other relief from any party in respect of any actual or alleged Wrongful Act or Employment Wrongful Act or Fiduciary Wrongful Act;

2.2.2. an Inquiry which is evidenced by a notice requiring the Director or Officer to attend which is first served during the Period of Insurance.

2.3. **Company** means: the Parent Company and any Subsidiary.

2.4. **Defence Costs** means:

2.4.1. costs and charges and expenses incurred in the response to a Claim with the prior and written consent of the Underwriters (such consent not to be unreasonably withheld);

2.4.2. the premium paid for financial or insurance instruments or bonds which are requested in order to institute an appeal to an award of civil damages against a Director or Officer (but not any obligation to procure or provide such instruments or bonds).

Defence Costs does not mean salaries, wages, travel or accommodation expenses.

2.5. **Director and Officer** means:

2.5.1. any natural person who was, or is, or becomes a director or officer of the Company or a trustee of a Benefit Program,

2.5.2. any Employee of the Company only if and to the extent a Claim is made against him or her for a Wrongful Act when named as co-defendant with a Director or Officer;

2.5.3. any Employee while acting in a managerial capacity with the Company or who is deemed to be performing any activity normally carried out by a Director or Officer;

2.5.4. any Employee in respect of an Employment Wrongful Act;

2.5.5. any natural person who was, or is, or becomes a non-executive director of the Company as defined according to applicable law,

2.5.6. where the Company or Outside Company is a charity or a trade association or any other such entity which is not-for-profit and has no issued share capital, any natural person who was, or is, or becomes a trustee or committee member of the Company;

2.5.7. any spouse or domestic partner or civil partner of any natural person who falls within the ambit of Definitions e) i), ii), iii), iv), v) or vi) above, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse or domestic partner or civil partner arising from a Claim insured against under this Insurance;

2.5.8. in the event of the bankruptcy or death or incapacity of any natural person who falls within the ambit of Definitions e) i), ii), iii), iv), v), vi) or vii) above, their estate and heirs and legal representatives, but only in respect of any Claim against such natural person otherwise covered under this Insurance.

Director or Officer does not mean nor include any external auditor or liquidator or administrator or receiver or administrative receiver of the Company.

2.6. **Employee** means:

2.6.1. any natural person who was, or is, or may hereafter be acting under a contract of service or apprenticeship with the Company;

- 2.6.2. where the Company is a charity or a trade association or any other such entity which is not- for-profit and has no issued share capital, any natural person who was, or is, or may hereafter be a volunteer of the Company;

Employee does not mean any consultant or sub-contractor or independent professional adviser or agent or Director or Officer or any natural person providing services to any entity except the Company.

2.7. **Employment Wrongful Act** means any actual or alleged:

- 2.7.1. discrimination or harassment or wrongful discipline or negligent evaluation of an Employee or of a prospective Employee; or
- 2.7.2. constructive or actual wrongful discharge or dismissal or termination of employment or the wrongful demotion or the refusal to promote or the wrongful deprivation of career opportunity of an Employee or the refusal to employ a natural person as an Employee; or
- 2.7.3. retaliatory action taken against an Employee proven to have arisen from that Employee exercising or attempting to exercise of his or her rights according to applicable law; or
- 2.7.4. employment related libel or slander or other defamation or humiliation or invasion of privacy or misleading representation or misleading advertising relating to employment.

Employment Wrongful Act does not mean any order or judgment to reinstate any Employee.

2.8. **Fiduciary Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission, neglect or breach of duty in respect of any Benefit Program.

2.9. **Inquiry** means an official investigation, inquiry, public examination, commission or prosecution instigated against a Director or Officer by or on behalf of any regulatory, self-regulatory, professional, statutory or official body or institution that is empowered by law to investigate the activities of the Company or a Director or Officer in such capacity.

2.10. **Loss** means:

2.10.1. such sums which the Directors or Officers (or the Company in the case of Insuring Clauses c) or e)) are legally liable to pay as compensatory damages for any Wrongful Act;

2.10.2. punitive or exemplary damages awarded in a court of law;

2.10.3. Defence Costs

2.10.4. Statutory Liability

2.10.5. **Loss does not mean:**

2.10.5.1. taxes, salaries, wages, benefits, remuneration, sums payable pursuant to a financial support direction or contribution notice issued by any pension authority;

2.10.5.2. damages constituting the multiplication of a lesser damages sum;

2.10.5.3. any amount deemed uninsurable under law;

2.10.5.4. the expenses of any Directors or Officers or the Company;

2.10.5.5. in the case of Insuring Clauses c) or d), any compensation payable in respect of statutory or contractual notice periods or costs incurred in any employment-related education programme or any liability or costs incurred in the modification of any building with the objective of making it more accessible or more accommodating to any disabled person;

2.10.5.6. in the case of Definitions 2.10.1, 2.10.2, 2.10.3 or 2.10.4 any liabilities or damages awarded as, or part of, a United States Claim;

2.10.5.7. fines or penalties, other than as specified within the definition of Statutory Liability;

2.10.5.8. Statutory Liability unless Item 4. of the Schedule states 'Applicable.'

2.11. **Managed** means the handling of records or the enrolment or termination or cancellation of the involvement of any Employee.

2.12. **Not For Profit Entity** means any registered charity, corporation without share-capital or trade association which is incorporated on a not-for-profit basis and is not incorporated or domiciled or licensed or registered in the United States of America.

2.13. **Outside Company** means any:

2.13.1. Company which the Underwriters have specifically agreed in writing to include within this definition;

2.13.2. Not For Profit Entity.

2.14. **Parent Company** means the Company named in Item 1 of the Schedule.

2.15. **Period of Insurance** means the period shown in Item 2 of the Schedule and, if applicable, the periods referred to Extensions b) and c).

2.16. **Insurance** means this wording and the Schedule and all endorsements appended hereto.

2.17. **Pollution** means any actual or alleged or threatened discharge or release or escape or dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a Director or Officer or the Company test for or monitor or clean up or remove or contain or treat or detoxify or neutralise any pollutants.

2.18. **Proposal Form** means the written proposal for this Insurance and any policy of which this Insurance is a renewal as submitted to and accepted by the Underwriters and any written information submitted to and accepted by the Underwriters in connection with this Insurance, all of which shall be deemed to form part of this Insurance. The Proposal Form shall be the basis of this contract of insurance and (with regard to the answers and declarations and statements and content thereof) shall be construed as a separate application for insurance by each Director or Officer.

Coverage afforded under Insuring Clause a) shall not be rescinded or voided by the Underwriters on the grounds of non-disclosure or misrepresentation.

2.19. **Schedule** means the document so-entitled which is appended to this Insurance.

2.20. **Statutory Liability** means pecuniary penalties awarded under the laws of the jurisdictions of Australia and New Zealand which the Underwriters are permitted by law to pay and the Directors or Officers or the Company are permitted by law to insure, awarded against;

Directors and Officers for any civil offence or any strict liability offence in connection with the discharge or dispersal or release or escape of Pollution and Defence Costs;

Directors and Officers or the Company for a strict liability offence in connection with any breach of any occupational health and safety laws or regulations and Defence Costs;

which result from any Wrongful Act giving rise to a Claim. Statutory Liability does not mean;

2.20.1. any criminal fine or criminal penalty, or

2.20.2. any pecuniary penalty arising out of any;

2.20.2.1. vehicle or air or marine traffic, or

2.20.2.2. ownership or possession or use of any motor vehicle or trailer or aircraft or spacecraft or watercraft or hovercraft, or

2.20.2.3. contract or any contractual agreement or any express guarantee or express contractual penalty or any acceptance of liability for liquidated damages, except where liability would exist in the absence of same, or

2.20.2.4. reckless or grossly negligent conduct or any deliberate or intentional violation of any law.

2.21. **Subsidiary** means any company in which the Company either directly or indirectly:

2.21.1. holds the majority of the voting rights; or

2.21.2. holds more than half of the issued share capital; or

2.21.3. has the right to remove or to appoint a majority of the board of directors.

2.21.4. **Subsidiary also means:**

2.21.4.1. any company which the Company or any Subsidiary acquires or creates during the Period of Insurance, other than (unless specifically accepted by the Underwriters in writing) any company that:

2.21.4.1.1. has total assets that exceed the sum stated in Item 10 of the Schedule; or

2.21.4.1.2. has its securities listed on any exchange in the United States of America; or

2.21.4.1.3. once acquired or created, does not fall within one or more of Definitions t) i) to iii) inclusive;

2.21.4.2. any internal group of natural persons who are appointed by the Directors or Officers to review and report upon a particular aspect of Company governance and operation and report with findings and conclusions to the Directors or Officers, but who otherwise exercise no operative control over the Company nor have any power to bind;

- 2.21.4.3. any internal committee or division established by, and operating within the ambit of, the Company.
- 2.22. **Underwriters** mean certain Lloyd's Underwriters and any other participating insurance companies.
- 2.23. **United States of America** means the United States of America and its respective states, localities, overseas territories and possessions.
- 2.24. **United States Claim** means any:
- 2.24.1. Claim brought in the jurisdiction and courts of the United States of America; or
 - 2.24.2. actual or attempted enforcement or upholding against the Directors or Officers or the Company by any court or arbitrator or tribunal outside the United States of America of any damages or compensatory or monetary awards or judgments or orders or settlements or costs or expenses made within the United States of America; or
 - 2.24.3. Claim brought as a consequence of the operations of any Outside Company in the United States of America.
- 2.25. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission, neglect, libel, slander, breach of duty, breach of trust or breach of warranty of authority by the Directors or Officers in the discharge of their duties as Directors or Officers or any matter claimed against them solely by reason of their being Directors or Officers of the Company.

With respect to Insuring Clauses a) and b) Wrongful Act also means Employment Wrongful Act. With respect to Insuring Clauses d) and e) Wrongful Act means any actual or alleged error, misstatement,

misleading statement, omission neglect or breach of duty by the Company.

With respect to any Subsidiary, Wrongful Act only means Wrongful Acts committed or allegedly committed between the dates that any company falls within Definition t) i) to iii) inclusive.



Limits & Retentions

3. LIMITS AND RETENTIONS

- 3.1. The Underwriters' aggregate limit of liability for all Loss in respect of all Claims shall be the amount specified in Item 3 of the Schedule, but in the event that the amount specified in Item 3 of the Schedule is exhausted, then it shall be reinstated once for the benefit only of non-executive directors to an aggregate amount equal to 25 percent of the amount specified in Item 3 of the Schedule or AUD 2,000,000 (whichever is the smaller).
- 3.2. An aggregate limit of liability of AUD 2,000,000 or the amount specified in Item 3 of the Schedule (whichever is the smaller) shall apply to Claims under Insuring Clauses c), d) and e) if applicable. This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the Schedule.
- 3.3. An aggregate limit of liability of AUD 250,000 or the amount specified in Item 3 of the Schedule (whichever is the smaller) shall apply to Claims for Statutory Liability if applicable. This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the Schedule.
- 3.4. The Underwriters shall only be liable for the amount of Loss in respect of each Claim which is in excess of the applicable retention amount specified Item 5 of the Schedule or elsewhere in this Insurance.
- 3.5. In the event that the Underwriters are liable for Loss under two or more Insuring Clauses then, notwithstanding anything stated in this Insurance to the contrary, only the largest of all applicable retentions shall be applied. The provisions of this clause e) will not apply if such Loss partially falls under Insuring Clause a), in which event all applicable retentions will apply.
- 3.6. All Claims or series of Claims or Loss or series of Losses arising from or attributable to or which are causally connected with a single Wrongful Act or a single Employment Wrongful Act or a single Fiduciary Wrongful Act or a series of related Wrongful Acts or a series of related Employment Wrongful Acts or a series of related Fiduciary Wrongful Acts which are causally connected shall be considered as a single Claim.
- 3.7. For the purposes of determining the limit of liability this Insurance will be construed as a joint policy with an aggregate limit available to all Directors and Officers and the Company collectively.



Extensions

4. EXTENSIONS

4.1. Outside Board

Underwriters will pay on behalf of any Director or Officer any Loss arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance arising from them serving at the request or the order or the direction of the Company in the capacity of a director or officer of any Outside Company in respect of any Wrongful Act committed in such capacity provided that:

- 4.1.1. such request or order or direction has been given by the Company in writing;
- 4.1.2. any cover under this extension shall only apply in excess of any other insurance or indemnification available to the Directors or Officers;
- 4.1.3. Underwriters shall not be liable to make any payment for Loss in connection with any Claim made against a Director or Officer by or on behalf of the Outside Company;
- 4.1.4. in the case of any Outside Company which falls within the ambit of Definition m) i), the Underwriters agreement to any Outside Company coverages must be specifically obtained in writing;
- 4.1.5. if any other insurance is provided by the Underwriters under any other contract of insurance, then the total aggregate limit of liability for all Loss covered by virtue of this extension shall be reduced by the limit of liability of such other contract of insurance;
- 4.1.6. no coverage is provided under this Extension for Loss arising from any Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any insolvency or bankruptcy or liquidation or receivership or administration of any Outside Company other than a Not For Profit Entity.

4.2. Discovery Period

The Directors or Officers shall have the right to an extension of the coverage granted by this Insurance with respect to any Claim which might be made against them during the effective period of this extension. Any Claim made during the effective period of this extension shall be considered made during the Period of Insurance.

4.3. Retired Directors and Officers

If a natural person retires from the position of Director or Officer during the Period of Insurance, they shall be entitled to an extension of the coverage granted by this Insurance with respect to any Claim which might be made against them during the effective period of this extension which arises out of their position as Director or Officer. Any Claim made during the effective period of this extension shall be considered made during the Period of Insurance.

The effective period of any extension shall be determined as follows:

4. Extension 4.2) shall terminate 12 months after the expiry of the Period of Insurance.
4. Extension 4.3) shall terminate 72 months after the expiry of the Period of Insurance.
4. Extensions 4.2) and 4.3) shall be deleted and of no effect:
 - 4.3.1. if this Insurance is succeeded or replaced by any other insurance policy;
 - 4.3.2. if at renewal the Underwriters offer terms or conditions or limits of liability or request premium even if any or all of them are different from those of the expiring policy;
 - 4.3.3. unless the Underwriters receive an additional premium equal to fifty percent (50%) of the premium specified in Item 11 of the Schedule within 30 days after the expiry of the Period of Insurance if the Underwriters cancel or refuse to renew the expiring policy;
 - 4.3.4. unless the Underwriters receive an additional premium equal to seventy five percent (75%) of the premium specified in Item 11 of the Schedule within 30 days after the expiry of the Period of Insurance if the Company cancels does not renew the expiring policy;
 - 4.3.5. unless a written request to invoke either extension is received by the Underwriters within 15 days after the expiry of the Period of Insurance;
 - 4.3.6. if this Insurance is terminated by the Underwriters for non payment of premium;
 - 4.3.7. in respect of any Wrongful Act taking place after the expiry of the Period of Insurance.

4. Extension 4.2) shall be deleted and of no effect if 4. Extension 4.3) is or has been invoked.

4. Extension 4.3) shall be deleted and of no effect if 4. Extension 4.2) is or has been invoked.

4. Extensions 4.1), 4.2) and 4.3) shall be deleted and of no effect in respect of all insuring clauses except Insuring Clauses a) and b).

4. Extensions 4.1) 4.2) and 4.3) shall not be construed to mean an increase or an extension or a reinstatement of the limit of liability specified in Item 3 of the Schedule.

4.4. Inquiry Costs

Underwriters will pay Defence Costs on behalf of any Director or Officer, subject to an aggregate sub- limit of AUD500,000 (or the limit specified in Item 3 of the Schedule, whichever is the smaller) (such limit being part of and not in addition to the aggregate limit of liability under this Insurance specified in Item 3 of the Schedule), in preparing for and attending an Inquiry.

4.5. Public Relations Costs

Underwriters will, subject to their prior written consent, pay on behalf of any Director or Officer all costs and fees and expenses which are reasonably necessary to reduce any damage to reputation suffered by the Director or Officer or the Company which arises out of information publicly accessible by third parties via the media and is a direct result of a Claim, subject to an aggregate sub-limit of AUD250,000 (or the limit specified in Item 3 of the Schedule, whichever is the smaller) (such limit being part of and not in addition to the aggregate limit of liability under this Insurance specified in Item 3 of the Schedule).

4.6. Assets and Liberty Costs

Underwriters will, subject to their prior written consent, pay where permitted by law, subject to a maximum amount in respect of any one Claim which shall not exceed AUD25,000 and a maximum amount in respect of all Claims which shall not exceed AUD50,000 (such limits being part of and not in addition to the aggregate limit of liability under this Insurance specified in Item 3 of the Schedule), the prosecution costs of each Director and Officer to obtain the discharge or revocation of a judicial order entered during the Period of Insurance imposing:

4.6.1. a confiscation or suspension or freezing of rights of ownership of real property or personal assets of such Director or Officer;

4.6.2. a charge over real property or personal assets of such Director or Officer;

4.6.3. a temporary or permanent prohibition on such Director or Officer from holding the office, or performing the function, of a director or officer;

4.6.4. the restriction of the liberty of such Director of Officer to a specified domestic residence or an official detention;

4.6.5. the deportation of a Director or Officer following the revocation of otherwise proper and current and valid immigration status for any reason other than the conviction of such Director or Officer of a crime;

4.6.6. the extradition of a Director or Officer.

4.7. Advancement of Defence Costs

If Underwriters have not denied indemnity for the Claim then the Underwriters shall at their sole discretion consent to advance Defence Costs on behalf of Directors and Officers or the Company prior to the final settlement of the Claim provided that such advance payments of Defence Costs shall be repayable to the Underwriters in the event and to the extent that it is determined that Directors and Officers or the Company are not entitled under this Insurance to payment of such Defence Costs.

Exclusions

5. EXCLUSIONS The Underwriters shall not be liable for Loss in connection with any Claim:

- 5.1. based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with, any:
- 5.1.1. legal or administrative or disciplinary or regulatory proceedings which existed or were pending at the date stated in Item 7 of the Schedule, or any fact or circumstance or event in any way pertaining to such proceedings;
 - 5.1.2.
 - 5.1.2.1. Director or Officer gaining any personal profit or advantage or receiving any remuneration to which he or she was not or is not legally entitled;
 - 5.1.2.2. Director or Officer committing any dishonest or fraudulent act or omission or any wilful violation of law;provided that this exclusion shall only apply if such profit or advantage or remuneration or act or omission is established by admission or by a court or a tribunal;
 - 5.1.3. circumstance notified or Claim made under any insurance which was in force prior to the Period of Insurance or circumstance or Claim which was known about by any of the Directors or Officers or the Company prior to the Period of Insurance;
 - 5.1.4. actual or alleged violation of the Securities Act 1933 or the Securities Exchange Act of 1934, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 - 5.1.5. actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 - 5.1.6. pensions or pension plans or pension trusts or pension programmes or employee benefit plan (other than those which fall within the ambit of Insuring Clause e));
 - 5.1.7. Pollution other than any Claim brought by a shareholder of the Company (other than a Director or Officer) on the basis solely that Pollution has caused a loss in the value of the share capital of the Company due to a breach of duty owed by the Directors and Officers;
 - 5.1.8. 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;
 - 5.1.9. war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;
 - 5.1.10. Terrorism (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft)

The burden of proving that any Claim does not fall within this Terrorism Exclusion shall be upon the Directors or Officers and/or the Company. For the purposes of this exclusion "Terrorism" means any act or acts of force or violence (whether threatened or actual) by any person or persons acting alone or on behalf of or in connection with any organisation which is carried out for political, religious or ideological ends and is either directed towards the over-throwing or influencing of any Government de jure or de facto or to put the public or any part of the public in fear or jeopardy.
 - 5.1.11. offering of securities of the Company;
 - 5.1.12. breach of professional duty or professional services provided by or on behalf of the Directors and/or Officers and/or the Company to a third party;

For the avoidance of doubt, this exclusion shall not apply to any Claim against any Directors or Officers alleging failure to supervise in their directorial or executive capacity.
 - 5.1.13. (if stated in Item 6 (d) of the Schedule to be applicable to this Insurance) United States Claim;
 - 5.1.14. in respect of Insuring Clauses c) and d);

- 5.1.14.1. actual or alleged breach of legislation relating to collective redundancies;
- 5.1.14.2. regulations relating to minimum wage regulations or disability benefits, unemployment benefits, retirement benefits, social security benefits, redundancy benefits, compensation or unemployment insurance;
- 5.1.14.3. order or judgment to reinstate any Employee;
- 5.1.14.4. actual or alleged liability under any express employment contract or agreement, other than any liability which the Company would face in the absence of such a contract or agreement.

5.2. for

- 5.2.1. damage to or destruction of any tangible property or the loss of use thereof;
- 5.2.2. bodily injury or sickness or disease or mental injury or mental anguish or death of any person, provided that this exclusion shall not apply to any Claim for an Employment Wrongful Act or for emotional distress in connection with a wrongful termination of employment or a Claim for discrimination or harassment by any Employee.

5.3. made:

- 5.3.1. by or on behalf of the Company or by or on behalf of any Director or Officer (it being understood and agreed that this exclusion shall not apply to Insuring Clauses a) or b) or to any Claim made by or on behalf of any Director or Officer which falls within the ambit of Insuring Clause c) or e);
- 5.3.2. (if stated in Item 6 (e) of the Schedule to be applicable to this Insurance) (in the name of the Company or not) or instigated by or on behalf of, or for the benefit of, any person or entity holding beneficially or otherwise more than the percentage of the issued share capital of the Company stated in Item 6 (f) of the Schedule;
- 5.3.3. (in respect of Insuring Clauses d) or e)) or based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, or in any way involving, or in connection with any:
 - 5.3.3.1. liability under any written or oral agreement of contract, unless such liability would still be applicable in the absence of such agreement or contract;
 - 5.3.3.2. actual or alleged liability under any law in respect of any workers' compensation including, but not limited to, employment or unemployment or disability or pension or medical or social security benefits;
 - 5.3.3.3. actual or alleged intentional failure of the Directors or Officers or the Company to comply with any law or regulation or ruling;
 - 5.3.3.4. actual or alleged failure to collect any employer's contributions, unless such failure is as a consequence of any negligence by or on behalf of any Director or Officer or the Company;
- 5.3.4. (in respect of Insuring Clause d)) or based upon, arising out of, arising from, directly or indirectly resulting from, attributable to, or in any way involving, or in connection with any actual or alleged violation of any law or regulation or by-law which regulates or restricts anti-trust or monopolistic behaviour or practices, price fixing, price discrimination, predatory behaviour or restraint of trade, or which protects competition;
- 5.3.5. or based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any Wrongful Act committed on or prior to the date stated in Item 8 of the Schedule.

The Wrongful Acts or knowledge of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of applying the exclusions.

Claims Conditions

- 6. CLAIMS CONDITIONS** It is a condition precedent to the liability of the Underwriters that:
- 6.1. notice of any Claim be given to the Underwriters as soon as is reasonably practicable and in any event within 30 days of the end of the Period of Insurance and that notice of a Claim be given in writing by post or by facsimile to the address specified in Item 12 of the Schedule and shall include full details including, but not limited to, dates, locations and the names of persons involved;
 - 6.2. in the event of a Director or Officer or the Company becoming aware of any circumstance which might reasonably be expected to give rise to a Claim the Underwriters shall be given notice of same in the manner specified in 6. Claims Conditions a) as well as reasons as to why it is considered to be a circumstance which might reasonably be expected to give rise to a Claim and any Claim subsequently made which arises from such circumstance shall be deemed to have been reported to the Underwriters on the date when such circumstance was first notified to them;
 - 6.3. at their own cost the Directors or Officers and the Company shall provide to the Underwriters in a timely fashion all information and assistance they reasonably require to allow them to investigate, defend, or resolve any Claim and to exercise any subrogation rights;
 - 6.4. the Underwriters have the right but not the obligation to control the defence and settlement of any Claim and the appointment of lawyers to represent the Directors and Officers or the Company;
 - 6.5. the Directors or Officers and the Company shall furnish the Underwriters in a timely fashion with copies of all papers in connection with any Claim or circumstance notified;
 - 6.6. the Directors or Officers or the Company shall not make any admission or give any offer or settlement or promise or indemnity to any party without the prior and written consent of the Underwriters;
 - 6.7. no Director or Officer nor the Company shall be required to contest any Claim at trial unless mutually agreed legal Counsel shall advise that the Claim should be contested;
 - 6.8. Defence Costs which are advanced on behalf of the Directors or Officers or the Company prior to the resolution of a Claim shall be repayable by the Directors or Officers or the Company to the Underwriters in the event that the Claim is not covered under this Insurance;
 - 6.9. if a Director or Officer or the Company refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or to continue defence of a Claim, then the liability of the Underwriters for such Claim shall not exceed the amount for which the Claim could have been settled up to the date of such refusal;
 - 6.10. in the event that any Claim under this Insurance gives rise both to Loss which is covered under this Insurance and losses which are not so covered, or includes a Claim against a Director or Officer and a Claim against the Company, the Underwriters and the Company and the Directors or Officers shall negotiate in good faith to agree a fair and proper basis for allocation taking into consideration the relative legal exposures of the various parties and that in the event that the Underwriters and the Company and/or the Directors or Officers cannot agree on allocation they shall submit the dispute to a mutually agreed upon legal counsel to determine an expeditious and fair and proper basis for allocation having regard to the relative legal exposures of the various parties;
 - 6.11. if the Directors and Officers are unable to satisfy a right to payment or indemnity against the Company for Loss arising out of a Claim solely by reason of the insolvency of the Company then the Underwriters will provide such payment or indemnity against Loss to the extent that the Company could have granted it as legally permitted or required by law in the absence of such insolvency;
 - 6.12. in the event of Loss arising from a Claim for which payment is due under the provisions of this Insurance, then the Underwriters shall in all events first pay Loss for which coverage is to be provided to any Director and/or Officer; and only after payment of Loss has been made to such Directors and Officers with respect to whatever remaining amount of the limit of liability is available after such payment for such other Loss for which coverage is provided under this Insurance;
 - 6.13. all rights of recovery of the Directors or Officers or the Company shall be protected and maintained and subrogated to the Underwriters if the Underwriters make any payment under this Insurance.

General Conditions

7. GENERAL CONDITIONS

7.1. The parties insured hereby agree that:

- 7.1.1. the Proposer as referred to in the Proposal Form or the Company shall act on behalf of all Directors or Officers and the Company with respect to the giving and receiving of notice of Claim or termination of this Insurance and the receipt and acceptance of any endorsements issued to form part of this Insurance and the exercising of any extensions to this Insurance including either or both of 4. Extensions c) and d);
- 7.1.2. no person who is not a party to this Insurance may enforce any of its terms unless all existing statutory requirements have been complied with;
- 7.1.3. information provided to the Underwriters regarding the Directors and Officers and the Company will be processed by the Underwriters for the purpose of providing insurance and handling Claims and it is understood and agreed that such processing may necessitate providing such information to third parties. By accepting the terms of this Insurance, the Company and the Directors and Officers assent to any such provision of information;
- 7.1.4. the bankruptcy or insolvency of any Director or Officer or the Company shall not relieve the Underwriters of their obligations or deprive the Underwriters of their rights under this Insurance.

7.2. Policy Construction

This Insurance shall be construed in accordance with the laws of Australia.

In the event that a dispute arises between Underwriters and the Company out of or otherwise in relation to this agreement, then:

- 7.2.1. any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- 7.2.2. if a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
 - 7.2.2.1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
 - 7.2.2.2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
 - 7.2.2.2.1. will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
 - 7.2.2.2.2. will act as an expert and not as an arbitrator;
 - 7.2.2.2.3. will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - 7.2.2.2.4. will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
 - 7.2.2.2.5. will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause 7.2.3) below) without first pursuing such informal resolution techniques in good faith.

In the event that the dispute is not resolved by such informal process within 35 days of the

Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- 7.2.3. Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

- 7.2.4. Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under this Insurance while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- 7.2.5. Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under this Insurance.
- 7.2.6. Notwithstanding anything herein, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with this Insurance where the party seeks urgent interlocutory relief.

7.3. Cancellation

This Insurance may only be cancelled by the Underwriters in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) or if the Company does not pay the premium when due. In the event of non-payment of premium by the Company, the Underwriters may cancel this Insurance by delivering to the Company or by mailing to the Company by registered, certified or other first class mail, at the Company's address as shown in Item 9. of the Schedule, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Period of Insurance terminates at the date and hour specified in such notice, or at the date and time of surrender. The Underwriters shall have the right to the premium amount for the period of the Period of Insurance during which the Insurance was in effect.

7.4. Assignment

Assignment or transfer of any interest under this Insurance shall not bind the Underwriters without their prior written consent.

7.5. Takeover or Merger

If during the Period of Insurance the Company is taken over or is merged with any other organisation or if any person or entity acquires more than fifty (50) percent of the voting share capital of the Parent Company the coverage afforded by this Insurance will continue in full force and effect until the end of the Period of Insurance with respect to Claims for Wrongful Acts and Employment Wrongful Acts and Fiduciary Wrongful Acts committed or allegedly committed before the effective date of such take over or merger or acquisition and the premium will be considered fully earned by the Underwriters.

INSURER'S LIABILITY SEVERAL NOT JOINT

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

PROPORTION OF LIABILITY

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

Complaints Resolution Process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on (07) 3442 3333 or email enquiries@asruw.com.au

We will keep you informed of the progress of our review at least every 10 working days and give you our response in writing within 15 working days provided we have all necessary information and have completed any investigation required.

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact:

Lloyd's General Representative in Australia
Level 9, 1 O'Connell Street,
Sydney NSW 2000
Telephone: (02) 8298 0783
Email: ldraustralia@lloyds.com

You will be advised whether your dispute will be handled by either Lloyd's Australia or the Complaints Department at Lloyd's in London.

Where your dispute is eligible for referral to the Australian Financial Complaints Authority (AFCA), your dispute will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.

AFCA will review our decision in accordance with their terms of reference. You are not bound by their decision. However, we are bound to act immediately on AFCA's decision. This is a free service provided by an independent body. Brochures outlining the operations of AFCA are available from us or the Insurance Council of Australia in your State or Territory. You can phone the AFCA from anywhere in Australia on 1800 931 678 or write to them at:

Australian Financial Complaints Authority
GPO Box 3,
Melbourne 3001
Email: info@afca.org.au

Where you are a retail client and your dispute is not eligible for referral to the AFCA, or where you are a wholesale client, Lloyd's Australia will refer your dispute to the Complaints Department at Lloyd's, who will then liaise directly with you.

In this case, you may be eligible for referral to the Financial Ombudsman Service (UK). Further details will be provided by the Complaints Department with their final decision to you.

Your dispute will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of our review of your dispute at least every 10 business days. The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your dispute within 15 business days of receipt, provided we have received all necessary information and have completed any investigation required.

This service is free of charge to policyholders



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Agencies

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