

BUSINESS PROTECTION MANAGEMENT LIABILITY

POLICY WORDING



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Important Information

How CGU protects your privacy

We use information provided by our customers to allow us to offer our products and services. This means we may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when we collect this information from someone else.

CGU will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give us your information, but this may affect our ability to provide you with insurance cover.

We may share this information with companies within our group, government and law enforcement bodies if required by law and others who provide services to us or on our behalf, some of which may be located outside of Australia.

For more details on how we collect, store, use and disclose your information, please read our Privacy Policy located at www.cgu.com.au/privacy. Alternatively, contact us at privacy@cgu.com.au or 13 15 32 and we will send you a copy. We recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of our products or services, or providing us with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how we will deal with your complaint.

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 commit us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code.

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.

Further information about Our complaint and dispute resolution procedures is available by contacting Us.

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.

Interest on unallocated premium

If we are unable to issue your insurance when we receive your application, we are required to hold your Premium in a trust account on your behalf until your insurance can be issued.

We will retain any interest payable by our bank to meet, among other things, bank fees and other bank costs we incur in operating the account.

Management liability cover

Important information

There are four Coverage Parts:

Coverage Part 1 – Directors & Officers Liability/Company Reimbursement

Coverage Part 2 – Employment Practices Liability

Coverage Part 3 – Statutory Liability

Coverage Part 4 – Company Liability

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

Section One

General Provisions

General definitions

The following definitions apply to all **Coverage Parts**:

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

Act of Parliament means any Act of the Parliaments of the Commonwealth of Australia (and/or Australian States and Territories) or New Zealand.

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

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

Authority means any regulator, government body, government agency, disciplinary body, criminal authority, official trade body, or any other person or body;

- a) having legal authority to conduct an investigation; or
- b) appointed, constituted or acting under a delegation pursuant to an **Act of Parliament** for the purposes of enforcement of such an **Act of Parliament**.

Bail and Civil Bond Expenses means the premium paid (but not the collateral) for a bond or other financial instrument to guarantee the contingent obligation of **Your People** for a specified amount required by a court hearing a **Claim**.

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

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

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

Crime Loss means the 'actual market value' for the direct financial loss of an **Insured Property** caused by a **Criminal Act** which takes place in the ordinary course of **Your Business**.

Criminal Act means any fraudulent or dishonest single, continuous or repeated act or series of acts committed by an **Employee, Director** or **Third Party** on or after the **Retroactive Date**, whether acting alone or in collusion with another **Employee, Director** or a **Third Party**, with the principal intent to cause a **Crime Loss** to **Your Company** or to obtain a personal financial gain.

Cyber Attack means any unauthorised instructions that are designed to alter, modify, destroy, damage, delete, record, transmit or contaminate information or computer programmes or data within **Your Company's** internet website, intranet or computer network by a **Hacker**.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees and expenses (including lawyers' fees, investigators' fees and experts' fees) incurred or agreed by **Us** in the investigation, defence or settlement of a **Claim**. **Defence Costs** shall not include any regular salaries, wages, overtime, fees or benefits of **You** or any of **Your People**.

Deprivation of Assets Proceedings means any proceeding brought against **Your People** by any **Authority** seeking:

- a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of **Your People**;
- b) a charge over real property or personal assets of **Your People**;
- c) a temporary or permanent prohibition on any of **Your People** from holding the office or performing the function of a **Director** or officer;
- d) a restriction of any of **Your People's** liberty to a specified domestic residence or an official detention;
- e) deportation of any of **Your People** following revocation of otherwise proper, current and valid immigration status for any reason other than **Your Peoples** conviction of a crime.

Director means:

- a) any person who is a past, present or future director, officer, member of the board of managers, management board member, management committee member or supervisory board member of **Your Company**; and/or
- b) any natural person who is a past, present or future director of a corporate trustee of a **Stand Alone Superannuation Fund**.

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

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

Emergency means a sudden state of danger which requires immediate action.

Employee means any natural person who is a past, present or future employee (or alleges that but for an **Employment Related Wrongful Act** would have been) a full-time, part-time or temporary person (including volunteers) working under a contract of service with **Your Company** and who **Your Company** has the right to govern and direct in their performance of such services. **Employee** does not mean any person who is an independent contractor or agent, partner or **Director** of **Your Company**.

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

- a) discharge or termination of employment, demotion, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote;
- b) breach of any written or oral employment contract or quasi-employment contract;

- c) employment-related misrepresentation, invasion of privacy, breach of data protection legislation, humiliation and defamation;
- d) violation of employment discrimination laws (including sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual orientation, religion, maternity, pregnancy, age and disability);
- e) violation or non-compliance with legislation regulating working hours;
- f) failure to grant tenure, adopt adequate workplace or employment policies and procedures, furnish accurate job references;
- g) retaliatory treatment of whistle-blower's and others;
- h) employment-related wrongful infliction of mental anguish or emotional distress.

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

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

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

Hacker means anyone who illegally accesses **Your Company's** internet website or computer network by electronically circumventing the security systems in place to protect against such access.

ICA means Insurance Contracts Act 1984 (Cth).

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

Insured Property means the following which belong to, are leased by or in the care, custody and control of **Your Company**:

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

Internet Liability means any actual or alleged:

- a) accidental and unintentional defamatory statement contained on **Your Company's** internet website, intranet or contained in emails sent by **Your People**; and/or
- b) accidental and unintentional plagiarism, infringement of a copyright, trademark, trade name, trade dress, domain name; and/or
- c) accidental and unintentional breach of privacy or unauthorised collection of data concerning any of **Your** customers or potential customers; and/or
- d) **Your Company's** negligent transmission of a computer virus, worm, logic bomb or Trojan horse to any of **Your** customers who use **Your** internet website.

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

Limit of Indemnity for the total period comprising of the **Period of Insurance** and the **Discovery Period** means the following:

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

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

Merger means the occurrence of:

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

Non-Profit Entity means any corporation, association, institution or foundation:

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

Official body means any regulator, government body, government agency, disciplinary body or administrative body or agency or official trade body legally empowered to investigate the affairs of **Your Company**.

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

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

Period of Insurance means the time from which cover commenced to the time cover expires as set out on the current **Policy Schedule**. Unless stated otherwise, cover shall expire at 4.00pm local time at the place where **You** arranged the cover.

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

Policy Schedule means the most recent policy schedule or revised policy schedule issued by **Us**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes material to be recycled, reconditioned or reclaimed.

Pollution means the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, upon land, the atmosphere or any water course or body of water.

Proposal means the written or electronic proposal form together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

Retroactive Date means the 'Retroactive Date' stated in the **Policy Schedule**.

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

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

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

Solicitor means any solicitor, firm of solicitor's, barrister or Queen's Counsel appointed to act for an **Insured** in relation to any **Claim**.

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

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

Statutory Fine means any monetary fine or penalty payable by an **Insured** on conviction of any offence under an **Act of Parliament**. **Statutory Fine** does not include any amounts payable or calculated by reference to:

- a) compensation;
- b) compliance, remedial, reparation or restitution costs;
- c) exemplary or punitive damages;
- d) any consequential economic loss;
- e) any requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost; and
- f) any fine or penalty the insurance of which is prohibited at law.

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

Tax Audit Costs means the reasonable and necessary professional fees, expenses and disbursements paid to accountants or registered tax agents for advising on and responding to an audit or investigation by a federal or state Commissioner of Taxation into **Your** liability to pay income tax, fringe benefits tax, capital gains tax, wholesale and sales tax, payroll tax, goods and services tax or superannuation contributions tax in respect to **Your Business**. '**Tax Audit Costs**' do not extend to include **Defence Costs** or the payment of any tax, or fine or penalty resulting from the failure to pay any tax.

Terrorism means an act including, but not limited to, the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is committed for or in connection with any political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

Third Party means any natural person other than any **Insured**.

We, Us, Our means CGU Professional Risks, CGU Insurance Limited ABN 27 004 478 371.

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

You, Your, Your Company means, individually and/or collectively, the organisation(s), company, partnership or sole trader named in the **Policy Schedule** and their **Subsidiaries** (if any) in existence at the inception date of the **Period of Insurance**.

Your Business means all activities involved in the business, as specified in the **Policy Schedule**.

Your People means:

- a) any one or more natural persons who were, now are or will be a **Director**, secretary, officer, or **Employee** of **Your Company**; or any person who was or now is or may hereafter become a trustee of a superannuation fund established for the benefit of the **Employees** of **Your Company** by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position;
- b) any person who by virtue of any applicable legislation or law is deemed to be a **Director** of **Your Company**. Provided that the term **Your People** shall not include:
 - i. any externally appointed officers such as administrators, receivers, statutory managers, liquidators, mortgagees in possession, or the like; or
 - ii. any registered company or corporation.

General extensions

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

1. Acquisition of your company

- a) If during the **Period of Insurance**:
 - i. **You** merge, or consolidate with another organisation or are taken-over; or
 - ii. another organisation, or person or group of organisations or persons acting in concert acquires **Securities** or voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights of **Your Company**; or
 - iii. another organisation, or person or group of organisations or persons acting in concert secures the ability to control decisions made by the board of **Directors** of **Your Company**; cover under this **Policy** continues until termination of the **Period of Insurance** as set forth in the **Policy Schedule** to this **Policy**, but only in respect of **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation takeover, acquisition, or the ability

to control the board of **Directors'** decisions. As of the effective date of such merger, consolidation, take-over, acquisition or the ability to control the board of **Directors'** decisions, all premiums paid or due at any time under this **Policy** are deemed fully earned and non-refundable.

- b) **You** agree to provide **Us** with written notice of such merger, consolidation, take-over, acquisition or ability to control the board of **Directors'** decisions as soon as practicable, together with such further information as **We** may subsequently request.

2. Acquisitions and creations

- a) **Subsidiaries** created or acquired by **You** prior to the beginning of the **Period of Insurance** shall have cover available to them under the terms of this **Policy** for **Wrongful Acts** committed or alleged to have been committed after the date the **Subsidiary** was created or acquired so long as **Your Business** as noted in the **Policy Schedule** remains unchanged in whole or part.
- b) **Subsidiaries** created or acquired by **You** after the beginning of and during the **Period of Insurance**, either directly or indirectly through any existing **Subsidiary**, shall have cover automatically available to them under the terms of this **Policy** for **Wrongful Acts** committed or alleged to have been committed after such date the **Subsidiary** was created or acquired subject to the new **Subsidiary**:
- not being domiciled, registered or incorporated outside of the Commonwealth of Australia or New Zealand;
 - not having any of its **Securities** listed on any exchange;
 - there being no changes in whole or part to **Your Business** as **Your Business** is noted in the **Policy Schedule**; and
 - the consolidated assets of such '**Subsidiary**' is less than 20% of the consolidated assets of the **Company** noted in the **Policy Schedule**.
- c) **Subsidiaries** created or acquired by **You** after the beginning of and during the **Period of Insurance** which are excluded under b) above may apply for an extension of cover for such **Subsidiaries**. **We** will request any additional information required and if **We** accept them, **We** will provide terms and conditions, including any additional premium payable, which may be required to extend cover to these **Subsidiaries**. If **We** grant cover it will be extended via endorsement and only for **Wrongful Acts** committed or alleged to have been committed on or after **We** provide cover.

3. Compensation for court attendance

We will pay a maximum of \$500 per day up to a total sub-limit of \$100,000 for each day **Your People** are legally required to attend court as a witness in respect of a **Claim** covered by this **Policy**. This sub-limit forms part of and is not in addition to the **Limit of Indemnity**.

4. Continuous cover

If the **Insured** first becomes aware of a **Circumstance** prior to the **Period of Insurance**, and that **Circumstance** is not notified to **Us** until a date during the **Period of Insurance** then:

- providing that the failure to notify such **Circumstance** was not as a result of fraudulent non-disclosure or fraudulent misrepresentation by the **Insured**; and
- subject to **You** having continuously held the relevant **Coverage Part** with **Us** between the time when the **Insured** first became aware of such **Circumstance** and the time of its notification; and
- subject to any reduction of liability by **Us** under this **Policy** to the extent of any prejudice suffered by **Us** as a result of the failure by the **Insured** to notify such **Circumstance** which may give rise to a **Claim** prior to the **Period of Insurance**;

We will accept such **Circumstance** as a valid notification including any **Claim** arising from it and General Exclusion 7. Known Claims and Circumstances, shall not apply to that **Circumstance**.

5. Discovery period

If this **Policy** is not renewed or replaced at the end of the **Period of Insurance** the **Insured** may purchase a **Discovery Period** of 84 months commencing from the end of the **Period of Insurance** during which time the **Insured** may continue to notify **Us** of any **Claims** but only **Claims** based on a **Wrongful Act** committed prior to the expiry of the **Period of Insurance**. The **Insured** must request this **Discovery Period** in writing prior to the end of the **Period of Insurance**. **We** will offer this **Discovery Period** at an additional premium and on such terms and conditions as **We** determine.

6. Estates and legal representatives

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

7. Preservation of indemnity

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

8. Public relations & crisis management costs

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

- help to mitigate any **Loss** under this **Policy**; and/or

- b) assist in exonerating any **Insured** against an alleged **Wrongful Act** in the event of a **Claim**.

This extension is subject to:

- a) no costs or expenses being incurred without **Our** prior written consent; and
- b) **Our** being reasonably satisfied that any expenditure with such a firm will be more than proportionately offset by reduced **Claims** costs to **Us**; and
- c) an annual aggregate sub-limit of \$100,000 across all **Coverage Parts** of this **Policy**.

9. Your previous subsidiaries

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

General conditions

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

1. Alteration and assignment clause

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

2. Authorisation clause

By the taking out of this **Policy**, **You** agree to act on behalf of the other **Insureds** and the other **Insureds** agree that **You** may act on their behalf in respect of:

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

3. Breach of conditions

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

4. Cancelling your policy

- a) **You** may cancel this **Policy** at any time by giving written notice to **Us**. **We** will refund to the **Insured** the pro-rata premium calculated on the unexpired **Period of Insurance** from the date of cancellation; but no refund of premium will be made where:

- i. **You** or any **Insured** have made a **Claim**, or are entitled to make a **Claim** or have notified a **Circumstance to Us**; or
- ii. in the event of any of the situations set out in General Extension 1.a) arising.

- b) **We** may also cancel this **Policy** in any of the circumstances permitted by the **ICA**. In the event of this **Policy** being cancelled by **Us**, a refund will be paid to the **Insured** for the pro-rata premium calculated on the unexpired **Period of Insurance** from the date of cancellation subject to the exceptions mentioned in 4.a) i. or ii. above.

5. Claims and the limit of indemnity

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

6. Confidentiality

You shall not disclose to anyone whether natural or corporate the nature of any liabilities covered by this **Policy** nor the premium specified in the **Policy Schedule** unless required by law.

7. Continuing representations

In granting cover under this **Policy**, **We** relied upon the statements and representations in the **Proposal**. The **Insured** represents that all such statements and representations including but not limited to the correctness of what is stated to be '**Your Business**' as noted in the **Policy Schedule** will continue to be true and the continuing accuracy of these statements is deemed material to the acceptance of the risk or the hazard assumed by **Us** under this **Policy**.

Notwithstanding what is stated above, any act, error, omission, breach, default or knowledge of any **Director** or officer will not be imputed to any **Insured** for the purposes of a statement or representation made in the **Proposal**.

8. Coverage parts

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

9. Fraudulent claims

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

10. Interpretation of words

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

11. Non-fraudulent non-disclosure

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

12. Policy law

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

13. Severability and non-imputation

In determining cover for **Claims** against **Your People**, no fact pertaining to, nor knowledge possessed by, nor any **Wrongful Act** committed by one of **Your People** will be imputed to any other of **Your People**.

14. Territorial Limits

The cover provided by this **Policy** extends to cover **Wrongful Acts** brought under the **Coverage Part** under which indemnity is sought, committed or occurring in whole or part anywhere in the world excluding:

- a) actions brought in or determined pursuant to the law of, the United States of America or Canada or any state or territory incorporated in, or administered by the United States of America or Canada; or
- b) arising from the enforcement of any judgement, order or award in respect of any action brought in any court of law in the United States of America or Canada or any state or territory incorporated in, or administered by the United States of America or Canada.

General claims conditions

The following general claims conditions apply to this **Policy**:

1. Allocation

- a) If in any **Claim**, the **Insured** incur **Loss** jointly with others, or incur in relation to a **Claim** an amount consisting of both **Loss** covered by this **Policy** and **Loss** not covered by this **Policy**, then **We** and the **Insured** will allocate such amount between covered **Loss** and uncovered **Loss** based upon **Our** assessment of which parts of the amount fall in and which fall outside the **Policy's** cover.
- b) If **We** and the **Insured** against whom a **Claim** is made agree on the allocation of **Defence Costs** in respect of **Loss** covered by this **Policy** and **Loss** not covered by this **Policy**, **We** will advance on a current basis

Defence Costs allocated to covered **Loss**. If there is no agreement on an allocation of **Defence Costs**, **We** will advance on a current basis **Defence Costs** that **We** believe to be covered under this **Policy** until a different allocation is agreed, or it is judicially determined.

- c) Any agreed, or judicially determined allocation of **Defence Costs** on account of a **Claim** will be applied retrospectively to all **Defence Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defence Costs** on account of a **Claim** will not apply to, or create any presumption or admission in respect of the allocation of other **Loss** on account of such **Claim** or any other **Claim**.

2. Defence and settlement

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

3. Defence costs

- a) **Defence Costs** are part of and not in addition to the **Limit of Indemnity** set forth in the **Policy Schedule** and any **Defence Costs** paid by **Us** reduce the available **Limit of Indemnity**.
- b) Subject to Claims Condition 1. Allocation, **We** will advance on behalf of the **Insured**, **Defence Costs** that they have incurred in connection with **Claims** made against them, prior to settlement of such **Claims**. Provided that to the extent it is finally established by judgment, settlement or other final adjudication that any such **Defence Costs**

are not covered under this **Policy**, all **Insured** severally according to their interests, agree to repay to **Us** such **Defence Costs**.

- c) **We** will indemnify the **Insured** for **Defence Costs** arising out of any criminal prosecution in which they are acquitted by a court, provided that:
- i. no **Defence Costs** other than those incurred with **Our** prior written consent shall be payable under this extension; and
 - ii. **We** shall not be under any obligation to advance **Defence Costs** as they are incurred, but may advance **Defence Costs** in amounts and at times as **We** in **Our** sole and absolute discretion determine; and
 - iii. the **Insured**, according to their respective interests, shall repay any payments advanced by **Us** in the event that they are not entitled to such payment under this **Policy**.
- d) Notwithstanding 3 c) i. and ii. above, if in the event of an **Emergency Our** written consent cannot be reasonably obtained by the **Insured**, the **Insured** have the right to incur up to \$30,000 in **Defence Costs** for a period of 30 days immediately following the date of such **Emergency**. The **Insured**, according to their respective interests, shall repay any payments advanced by **Us** in the event that they are not entitled to such payment under this **Policy**.

4. Insured's right to contest claims

If the **Insured** does not agree with a decision made by **Us** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but **Our** liability will not exceed the amount for which the **Claim** should be settled in the opinion of a Senior Counsel appointed under General Claims Condition 9. Senior Counsel.

We shall pay all **Defence Costs** incurred up to the date the **Insured** notifies **Us** in writing of its election under this clause, and shall pay the **Insured** (subject to the **Limit of Indemnity** less the **Excess**) the amount for which the **Claim** should be so settled.

The **Insured** expressly agrees that **Our** liability in respect of such **Claim** shall then be at an end. If **We** believe that the **Claim** will not exceed the **Excess**, **We** may instruct the **Insured** to conduct the investigation, defence and settlement at their own expense. Should the **Claim** subsequently exceed the **Excess**, **We** agree to reimburse the reasonable **Defence Costs** incurred by the **Insured** in excess of the **Excess**, or pay on their behalf any additional **Defence Costs**, but not exceeding the lesser of the amount Senior Counsel advised the matter should be settled for or the **Limit of Indemnity**.

5. Order of payment

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

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

6. Other insurance

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

7. Recoveries

We agree not to exercise **Our** rights of recovery against an **Insured**, save where General Claims Condition 2. b) applies. All recoveries obtained by the **Insured** from parties other than an **Insured**, after the settlement or resolution of a **Claim** and after deducting the reasonable cost of obtaining such recovery, shall be applied in the following order:

- a) first to the benefit of the **Insured**, where the **Insured** has contributed to a payment exceeding the **Limit of Indemnity** made to resolve the **Claim** up to the amount of that payment;
- b) then to **Our** benefit for the amount **We** paid to resolve the **Claim**;
- c) then to the benefit of the **Insured** for the **Excess** paid in respect of the **Claim**;
- d) then to the benefit of the **Insured** for any uninsured losses; and
- e) then to **Our** benefit in respect of any administrative costs connected with the **Claim**.

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

8. Reporting and notification

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

CGU Insurance Limited
Professional Risks Claims Department
GPO Box 4609 Melbourne VIC 3001
Email: priclaims@cgu.com.au

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

9. Senior counsel

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

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

10. Subrogation

We shall be subrogated to the **Insured's** rights of recovery to the extent of any payment made under this **Policy**. Each **Insured** agrees to do everything necessary to secure and preserve such rights, including, but not limited to, the execution of such documents as are necessary to enable **Us** to bring proceedings in the name of the **Insured**.

General exclusions

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

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

1. Asbestos

directly or indirectly caused by, in consequence of, or contributed to by, or arising from or in any way connected to asbestos, asbestos fibres or derivatives of asbestos.

2. Bodily injury and property damage

for any bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, except that:

- a) this exclusion does not apply in respect of: any liability for actual or alleged mental anguish and emotional distress, in any **Claim** by **Your People** for any **Employment Related Wrongful Act** in Coverage Parts 1 – Directors and Officers Liability / Company Reimbursement and Coverage Part 2 – Employment Practices Liability;
- b) **We** will pay, on behalf of **Your People**, **Defence Costs** arising from any **Claim** first made against them and notified to **Us** during the **Period of Insurance** involving criminal proceedings for corporate killing or corporate manslaughter occurring or committed in Australia or New Zealand provided such payments are not contrary to law; and
- c) this exclusion does not apply to any Work Health and Safety coverage afforded under Coverage Part 1 – Directors and Officers Liability / Company Reimbursement and Coverage Part 3 – Statutory Liability.

3. Damages

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

4. Franchise liability

directly or indirectly caused by, arising from or in anyway connected to any franchise agreement or the absence of a franchise agreement.

5. Fraud

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

This Exclusion 5. above does not apply to Coverage Part 4 – Company Liability, Extension 2. Crime Loss.

6. Insolvency

arising directly or indirectly out of, or attributable to or in any way connected to the **Financial Impairment**, bankruptcy, insolvency, receivership or administration of **Your Company**, any **Associated Entity**, **Non Profit Entity** or other entity for which **Outside Positions** cover is confirmed in the **Policy Schedule**. However this exclusion shall not apply under Coverage Part 1 – Directors & Officers Liability/Company Reimbursement, C) Extension 4. Directors Tax Liability.

7. Known claims and circumstances

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

8. Personal profit

based upon, arising out of or attributable to any **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled. This Exclusion 8. does not apply to Coverage Part 4 – Company Liability, Extension 2. Crime Loss.

9. Pollution

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

- a) under Coverage Part 1 – Directors and Officers Liability/ Company Reimbursement of this **Policy**, **We** will pay, on behalf of **Your People**, **Defence Costs** with a sub-limit up to the lesser amount of the **Limit of Indemnity** or \$1,000,000 arising from any **Claim** first made against them and notified during the **Period of Insurance** and that **Claim** involves a criminal or regulatory offence occurring or committed in Australia or New Zealand only;

- b) under Coverage Part 1 – Directors and Officers Liability/Company Reimbursement of this **Policy, We** will pay, on behalf of **Your People, Loss** arising from any **Claim** first made against them and notified during the **Period of Insurance** involving a shareholder and/or bondholder of **Your Company** either directly or derivatively alleging loss in the value of the share capital of **Your Company** by reason of **Pollution** occurring or committed in Australia or New Zealand only; and
- c) under Coverage Part 3 – Statutory Liability of this **Policy, We** will pay, on behalf of **Your Company, Loss** with a sub-limit up to the lesser amount of the **Limit of Indemnity** or \$1, 000,000 for any **Claim** for a **Wrongful Act** in respect of **Pollution** occurring or committed in Australia or New Zealand only.

10. Professional services

- a) arising directly out of any actual or alleged act, error, omission, neglect or breach of duty in respect of any professional services or professional advice provided by the **Insured**; or
- b) arising directly or indirectly out of any actual or alleged breach of any contract for the provision of professional services or professional advice provided by the **Insured**; or
- c) any actual or alleged failure to render any professional services or professional advice.

11. Retroactive date

arising out of or connected with any **Wrongful Act, Crime Loss or Tax Audit Costs** committed, occurring or incurred prior to the **Retroactive Date** if any, specified in the **Policy Schedule**.

12. Securities

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

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

13. War, terrorism, radioactivity

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

- a) War
 - i. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) or warlike operations, or civil war; or
 - ii. mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power; or
 - iii. 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.

- b) Terrorism
 - i. death, injury, illness, **Loss**, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any act of **Terrorism** regardless of any other contributing cause or event; or
 - ii. death, injury, illness, **Loss**, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to the matters set out in paragraph b) i) of this exclusion; or
- c) Radioactive Contamination
 - i. **Loss** or damage to property eligible for insurance by the relevant Nuclear Insurance Pool and/or Association; or
 - ii. **Loss**, cost, damage, liability or expense directly or indirectly caused by or contributed to or arising from:
 - aa) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - ab) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - ac) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
 - ad) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

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

Coverage Part 1

Directors & Officers Liability/Company Reimbursement

Note: This Coverage Part 1 is to be read in conjunction with the General Provisions section of this **Policy**.

a) Definitions

The following definitions apply to this Coverage Part 1 only:

Claim means:

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

Loss means any amount which **Your People** become legally obligated to pay on account of any **Claim** first made during the **Period of Insurance**. Such **Claim** must be made against **Your People** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**. **Loss** does not include any amount for which **Your People** are absolved from payment.

Wrongful Act means any error, misstatement, misleading statement, act, omission, negligence, **Employment Related Wrongful Act**, breach of duty, defamation, breach of warranty of authority, wrongful trading, or other act actually or allegedly committed or attempted by **Your People** in their capacity as a **Director**, secretary, officer or **Employee** of **Your Company** or in an **Outside Position**.

b) Coverage

The following coverage applies to this Coverage Part 1 only:

1. Individual cover

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

2. Your reimbursement cover

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

c) Extensions

The following extensions apply to this Coverage Part 1 only:

1. Automatic reinstatement of the limit of indemnity for non-executive directors

In the event the **Limit of Indemnity** and all other indemnification available to a **Non-Executive Director** is exhausted **We** will reinstate the **Limit of Indemnity** once, provided that this provision is only available to **Your People** to the extent **Your People** are a **Non-Executive Director** of **Your Company**.

For the purpose of this extension a **Non-Executive Director** is:

- a) any natural person who was or is or during the **Period of Insurance** becomes a member of the board of **Your Company**; and
- b) who within the last three years:
 - i. has not served as an executive **Director** of **Your Company**; and
 - ii. has not served as an **Employee** of **Your Company**; and
 - iii. has not received, either directly or indirectly from **Your Company**, money or benefits of any kind for services given in any capacity except as a **Director** of **Your Company**.

2. Bail and civil bond expenses

We will pay the cost of **Bail** and **Civil Bond Expenses** for **Your People** incurred in the event of a **Claim** that is covered under this **Policy** subject to:

- a) no costs or expenses being incurred without **Our** prior written consent; and
- b) a sub-limit of \$100,000.

3. Deprivation of Assets Proceedings

We will pay the reasonable and necessary fees, costs and expenses incurred by **Your People** arising from any **Deprivation of Assets Proceedings** subject to a sub-limit of \$100,000.

4. Directors tax liability

We will pay, on behalf of **Your People** any personal liability **Your People** incur with respect to the unpaid taxes of **Your Company** due to **Your Company's Financial Impairment** subject to:

- a) a sub-limit of \$25,000; and
- b) only where **Your Company** has failed to pay such taxes solely because of **Your Company's Financial Impairment**; and
- c) the failure to pay such taxes is not criminal, wilful, reckless or deliberate.

5. Employment superannuation scheme

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

6. Extradition Expenses

We will pay on behalf of **Your People** reasonable and necessary fees, costs and expenses incurred with **Our** prior written consent (which shall not be unreasonably withheld) in respect of an extradition proceeding in retaining:

- a) an accredited counsellor;
 - b) an accredited tax advisor
- subject to a sub-limit of \$50,000.

7. Outside position liability

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

8. Retired directors

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

- a) disqualification from holding the office of **Director** or officer; and/or
- b) dismissal from their position as **Director** or officer; and/or
- c) the acquisition of **Your Company** as noted in General Extensions 1. Acquisition of Your Company; and/or
- d) **Your Company** being wound-up.

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

9. Spousal liability

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

- a) the legal status as a **Spouse** of **Your People**; or
- b) ownership or interest in property which the claimant seeks as recovery for alleged **Wrongful Acts** of **Your People** then:
 - i. all **Loss** which such **Spouse** becomes legally obligated to pay by reason of such **Claim** will be treated for purposes of this **Coverage Part** as **Loss** which **Your People** become legally obligated to pay on account of the **Claim** made against **Your People**;
 - ii. all terms and conditions of this **Coverage Part**, including without limitation the **Excess** if any, applicable to **Loss** incurred by **Your People** in the **Claim** will also apply to such spousal **Loss**; and
 - iii. the cover provided by this extension does not apply to the extent the **Claim** alleges any act or omission by **Your People's Spouse**.

d) Exclusions

The following exclusions apply to this Coverage Part 1 only. We will not be liable for **Loss** on account of any **Claim**:

1. Anti-competitive practices

arising directly out of:

- a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or
- b) tortious interference in a third party's business or contractual relationships.

2. Conduct

based upon, directly or indirectly arising from or attributable to:

- a) any wilful breach of duty, dishonest, fraudulent, criminal or malicious act or omission or other act or omission committed with deliberate intent of such **Insured**;
- b) such **Insured** 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**;
- c) such **Insured** 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 conduct specified above has been established by:

- a) a written admission by the **Insured** or any person authorised to make such an admission on behalf of the **Insured**; or
- b) court judgement or other final adjudication.

3. Fines and penalties

which consists of fines or penalties.

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

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

4. Insured versus insured

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

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

5. Major shareholder

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

6. Outside position

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

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

7. Superannuation liabilities

directly or indirectly caused by, arising from or in anyway connected with:

- a) a failure to pay superannuation contributions giving rise to a superannuation guarantee charge; or
- b) the failure of **Your People** to pay into, or collect contributions for an Employment Superannuation Scheme as required by law and/or the Employment Superannuation Scheme trust deed; or
- c) the failure to pay any amount payable to a beneficiary of an Employment Superannuation Scheme under the rules governing the Employment Superannuation Scheme.

Coverage Part 2

Employment Practices Liability

Note: This Coverage Part 2 is to be read in conjunction with the General Provisions section of this **Policy**.

a) Definitions

The following definitions apply to this Coverage Part 2 only:

Claim means:

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

Loss means any amount which **Your Company** becomes legally obligated to pay on account of any **Claim** first made during the **Period of Insurance**. Such **Claim** must be made against **Your Company** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**.

Loss does not include:

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

Wrongful Act means any **Employment Related Wrongful Act**.

b) Coverage

The following coverage applies to this Coverage Part 2 only:

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

c) Exclusions

The following exclusions apply to this Coverage Part 2 only: **We** will not be liable for **Loss** on account of any **Claim**:

1. Employee entitlements

- a) for payment to any of **Your People** for any amount which **Your Company** was obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay.
- b) based upon, directly or indirectly arising from or attributable to compensation payable in respect of a contract of employment alleged to be unfair or the seeking of relief pursuant to any law or regulation or pursuant to any statute, ordinance or industrial instrument in the States or Territories of the Commonwealth of Australia or New Zealand.

However this exclusion shall not apply to any **Defence Costs** incurred by **Your Company** with respect to such **Claim**.

2. Employee remuneration

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

3. Industrial action

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

4. Modifications to workplace

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

5. Non-compliance

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

6. Redundancy compensation

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

7. Statutory liability

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

Coverage Part 3

Statutory Liability

Note: This Coverage Part 3 is to be read in conjunction with the General Provisions section of this **Policy**.

a) Definitions

The following definitions apply to this Coverage Part 3 only:

Claim means:

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

Loss means any **Defence Costs** and any **Statutory Fine** arising from a **Claim** notified during the **Period of Insurance**.

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

b) Coverage

The following coverage applies to this Coverage Part 3 only:

We will pay, on behalf of **Your Company**, **Loss** for any **Claim** for a **Wrongful Act** first made and notified to **Us** during the **Period of Insurance** up to the lesser amount of the **Limit of Indemnity** or \$2,000,000.

c) Exclusions

The following exclusions apply to this Coverage Part 3 only: **We** will not be liable for **Loss** on account of any **Claim**:

1. Anti-competitive practices

arising directly out of:

- a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or

- b) tortious interference in a third party's business or contractual relationships.

2. Enforcement order

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

3. Cyber Liability

directly or indirectly caused by, arising from or in anyway connected to a **Cyber Attack**.

4. Motor, air and marine

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

5. Reckless disregard

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

6. Unreasonable plea

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

7. Your business

arising out of activities which are not either:

- a) part of the ordinary course of **Your Business**; or
- b) directly connected with **Your Business**.

Coverage Part 4

Company Liability

Note: This Coverage Part 4 is to be read in conjunction with the General Provisions section of this **Policy**.

a) Definitions

The following definitions apply to this Coverage Part 4 only:

Claim means:

- a) any written communication demanding compensation or threatening the commencement of proceedings in respect of an actual or alleged **Wrongful Act**;
- b) any written document served upon **Your Company** marking the beginning of a civil, criminal or arbitral proceeding against **Your Company** alleging a **Wrongful Act**;
- c) any investigation brought by an **Official Body** into the affairs of **Your Company** whether or not a **Wrongful Act** is alleged;
- d) any **Crime Loss** sustained by **Your Company**;
- e) any **Tax Audit Costs** incurred by **Your Company**.

Loss means any amount which **Your Company** becomes legally obligated to pay on account of any **Claim** first made during the **Period of Insurance**. Such **Claim** must be made against **Your Company** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**.

“Loss” also means any **Crime Loss** first discovered and **Tax Audit Costs** incurred by **Your Company** during the **Period of Insurance**. However, **Loss** does not include any amount for which **Your Company** is absolved from payment, or payable by **Your Company** under any warranty, guarantee or for money payable to a third party for goods or services supplied to **Your Company**.

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

b) Coverage

The following coverage applies to this Coverage Part 4 only:

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

c) Extensions

The following extensions apply to this Coverage Part 4 only:

1. Breach of Contract Defence Costs

We will pay **Defence Costs** arising from any **Claim** in connection with an alleged breach by **Your Company** of any express contract or agreement (whether written or oral) with a third party. **Our** total liability during the **Period of Insurance** for all **Claims** under this extension will not exceed \$100,000.

2. Crime loss

Subject to the **Crime Loss Excess** specified in the **Policy Schedule**, **We** will reimburse **Your Company**, with a sub-limit up to the lesser amount of the **Limit of Indemnity** or \$250,000 for any **Crime Loss** resulting from a **Criminal Act**, provided such **Crime Loss** is first **Discovered** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance**. This extension shall also cover subject to the sub-limit:

- a) auditors fees, costs, charges and expenses incurred with **Our** prior written consent that are reasonably necessary to determine the value of a **Crime Loss** and are reasonable in amount on **Our** acceptance that a **Crime Loss** has occurred; and
- b) **Crime Loss** in relation to **Your Stand Alone Superannuation Fund**; and
- c) **Crime Loss** in relation to any welfare, social or sporting club formed with **Your** knowledge and consent and designed exclusively for the benefit of **Your Employees**; and
- d) **Crime Loss** caused by a **Director** (but only where there are multiple **Directors of Your Company**) is sub-limited up to \$100,000 and is part of and not in addition to the sub-limit for this extension.

However, this extension shall not cover **Crime Loss**:

- a) if an indemnity is available under any other policy; or
- b) arising out of, or in any way related to any proprietary information, intellectual property, trade secrets, confidential processing methods, or other confidential information of any kind; or
- c) arising out of, or in any way related to the destruction, damage or forcible entry to any premises or building; or
- d) arising out of, or in any way related to indirect or consequential loss or damage of any kind, provided that this exclusion shall not apply to auditors fees, costs, charges and expenses that are reasonably required in determining the value of a **Crime Loss** and are reasonable in amount; or
- e) notwithstanding the Continuous Cover clause, first **Discovered** prior to the commencement of the **Period of Insurance**, or after the expiry of the **Period of Insurance**; or

- f) which can only be proved by means of one or more of the following: a profit and loss computation or comparison, or a comparison of inventory records with an actual physical inventory count; or
- g) arising out of, or in anyway related to, the voluntary giving, exchanging, purchasing or surrendering of **Insured Property** unless such voluntary giving, exchanging or surrendering has occurred by reason of a **Criminal Act** covered under this extension; or
- h) arising out of, or in any way related to only one individual's signature or authorisation being required to validly sign cheques, issue electronic funds transfer, prepare cheque requisitions, handle bank deposits, reconcile bank statements, or refund monies in excess of \$1,000.00 in value without the independent review and approval from at least one other person of equal seniority who must examine the supporting vouchers or requisitions or verify the transaction;
- i) arising out of, or in any way related to only one individuals authorisation being required to add or delete vendors;
- j) arising out of, or in anyway related to the forgery, alteration or fraudulent use of any credit card, fuel card or store card issued by **Your Company** to **Employees** or **Directors** unless the terms and conditions under which such credit card, fuel card or store card issued have been fully complied with by **Your Company**.

You must provide adequate proof of a **Crime Loss**. This includes but is not limited to the following:

- a) adequate proof of the quantum of **Crime Loss**;
- b) all facts attributable to the **Crime Loss**, including perpetrators and other relevant parties, activities that lead to the **Crime Loss**, and period of time such activities have been evident;
- c) highlighting security or control weakness and discussion around how these weaknesses will be addressed;
- d) all supporting documentation and pertinent date and records.

3. Identity Fraud

- a) If any party other than **Your People** enters into any agreement with any third party fraudulently representing themselves as a representative of **Your Company**, then **We** will pay any reasonable and necessary fees, costs and expenses incurred by **Your Company** with **Our** written consent (which shall not be unreasonably withheld), in establishing that such fraudulent misrepresentation has occurred, should the third party seek to enforce such agreement against **Your Company**; and
- b) **Our** total liability during the **Period of Insurance** for all **Claims** under this extension will not exceed \$100,000.

4. Internet liability

We will pay for **Loss** on behalf of **Your Company** for any **Claim** for **Internet Liability** with a sub-limit up to the lesser amount of the **Limit of Indemnity** or \$150,000.

However, this extension shall not cover any **Internet Liability**:

- a) arising out of or attributable to licensing fees, or royalties ordered, directed or agreed to be paid by the **Insured** for the continued use of a person or entity's copyright, trade name, trade dress, trade mark, service mark, service name, slogan or other protected intellectual property;
- b) arising out of or in anyway related to any unsolicited electronic dissemination of emails, faxes or other communications to a third party including an actual or alleged violation of the Spam Act 2003 (Cth) and any other federal, state or foreign anti-spam statute, law or regulation;
- c) arising directly or indirectly from the use or provision of any games, gaming, gambling, lottery or auctioneering activities.

Exclusion 6. Intellectual Property shall not apply to this Extension 4. Internet Liability but only where **Your Company** can demonstrate it has adequate copyright compliance procedures in place including but not limited to:

- a) procedures for seeking permission to reproduce or copy material; and
- b) procedures for posting content online; and
- c) seeking advice from qualified independent third parties to review and confirm that any publication issued by **Your Company** does not breach third party intellectual property rights.

5. Tax audit costs

Subject to the **Tax Audit Costs Excess** specified in the **Policy Schedule**, **We** will pay **Tax Audit Costs** with a sub-limit up to the lesser of the amount of the **Limit of Indemnity** or \$250,000.

However, this extension will not pay for any **Tax Audit Costs**:

- a) incurred without **Our** prior written consent; and/or
- b) arising from **Your** improper, unwarranted or unjustified refusal or failure to comply with any lawful request made by a state or federal Commissioner of Taxation for the production of documents or the supply of information. Refusal or failure to comply will not be deemed improper, unwarranted or unjustified if **You** refuse or fail to comply based upon the reasonable advice of **Your** accountant or tax agent that such refusal or failure is appropriate and **You** provided that accountant or tax agent with all relevant documents and information; and/or
- c) relating to audits or investigations under customs legislation; and/or

- d) relating to audits or investigations of income received or earned where the source of income is, outside the Commonwealth of Australia or where the services giving rise to the **Claim** are performed by persons or entities ordinarily resident outside Australia; and/or
- e) relating to audits or investigations arising out of any fraud or fraudulent act or omission committed by **You** or on **Your** behalf; and/or
- f) arising from audits or investigations where **You**, or any person acting on **Your** behalf, has become aware of any error or deficiency in any return of income or other documentation supplied to a state or federal Commissioner of Taxation and **You**, or any person acting on **Your** behalf, has failed to notify the Commissioner of that error or deficiency within the lesser of a reasonable time or the time limit for contesting such an error or deficiency.

d) Exclusions

The following exclusions apply to this Coverage Part 4 only (but do not apply to: Extension 2. Crime Loss or Extension 5. Tax Audit Costs above).

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

1. Anti-competitive practices

arising directly out of:

- a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or
- b) tortious interference in a third party's business or contractual relationships.

2. Breach of contract

based upon, arising out of, attributable to any liability of **Your Company** under any written or verbal contract or agreement. However, this exclusion will not apply to any liability that would have attached to **Your Company** in absence of such contract.

3. Conduct

based upon, directly or indirectly arising from or attributable to any wilful breach of duty, dishonest, fraudulent, criminal or malicious act or omission or other act or omission committed with deliberate intent of such **Insured**.

4. Cyber Attack

directly or indirectly caused by, arising from or in anyway connected to a **Cyber Attack**.

5. Fines and penalties

which consists of fines or penalties.

6. Intellectual property

arising out of any actual or alleged infringement, violation, plagiarism, breach of intellectual property or copyright, patent, trade mark or trade secret.

7. Intentional claims

that **Your Company** has intentionally encouraged.

8. Motor, air or marine

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

9. Product liability and product recall

arising directly or indirectly from or in respect of:

- a) **Your Company's** manufacture, distribution and/or sale of products; or
- b) the recall of any products manufactured, distributed and/or sold by **Your Company**.

10. Statutory liability

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

11. Trading debts

arising out of any trading or business debt incurred by **Your Company**.

12. Your people

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

CONTACT DETAILS

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