



 **PRORISK**

**Management Liability
Insurance Policy**

 Policy Wording

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Management Liability Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. This **policy** includes this document and the **General Terms & Conditions Section** attached to this **policy** and the **policy** should be interpreted with the **General Terms and Conditions**. **Our** total aggregate liability under each Insuring Clause will not exceed the sub-limit specified in the **schedule**. Each Insuring Clause is subject to the **excess** specified in the **schedule**.

SECTION 1: INSURING CLAUSES

1.1 Insured Person Liability

We will pay on behalf of an **insured person** any **loss**, where they are not indemnified by the **company**, as applicable, incurred in respect of any **claim** made against such **insured person** in that capacity, during the **insurance period** for a **wrongful act**.

1.2 Company Reimbursement Liability

We will reimburse the **company**, where they have granted indemnification to an **insured person**, for any **loss** incurred in respect of any **claim** made against any such **insured person** in that capacity, during the **insurance period** for a **wrongful act**.

1.3 Entity Liability

We will pay on behalf of the **company**, any **loss** in respect of any **claim** made against the **company** during the **insurance period** for a **wrongful act**.

1.4 Employment Practices Liability

We will pay on behalf of an **insured** any **loss** in respect of any **claim** made against an **insured** during the **insurance period** for a **wrongful act**.

1.5 Superannuation Trustee Liability

We will pay on behalf of a **trustee** **loss** incurred in that capacity in respect of any **claim** made against that **trustee** during the **insurance period** for a **wrongful act**.

1.6 Comprehensive Crime Cover

We will pay the **policyholder** for **direct financial loss** which is first **discovered** during the **insurance period**.

1.7 Tax Audit Expenses

We will pay on behalf of the **company** any **tax audit professional fees** arising from a **tax audit** notified to the **company** during the **insurance period**.

1.8 Statutory Liability

We will pay on behalf of the **company** any **loss** in respect of a **claim** made against the **company** during the **insurance period** by an **official body** for a **wrongful act**.

1.9 Investigation Costs Cover

We will pay on behalf of an **insured** their **loss** arising from an **investigation** commenced during the **insurance period** by an **official body** into the affairs of the **company**.

SECTION 2: EXTENSIONS OF COVER

Each Extension of Cover is subject to the **excess** and sub-limit specified in the **schedule**.

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Extensions Applicable to All Insuring Clauses

2.1 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **policyholder** incorporates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage as outlined in the paragraph above, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. **We** may then, with reasonable consideration, agree to extend cover in return for the payment of additional premium and any amendments to the terms of this **policy**.

Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

2.2 Discovery period following a change in exposure

If there is a **change in exposure**, the **company** ceases business, or the **company** becomes insolvent, **we** will only pay:

- (a) **loss** arising from any conduct prior to the **change in exposure** and which is otherwise covered by this **policy**;
- (b) **investigation costs** for any **investigation** in respect of conduct prior to the **change in exposure** and which is otherwise covered by this **policy**; or
- (c) **direct financial loss** committed in respect of conduct prior to the **change in exposure** and which is otherwise covered by this **policy**.

The **policyholder** may, up to 30 days after:

- (i) the **change in exposure**; or
- (ii) the **policyholder** ceasing business,

request an offer from **us** for a **discovery period** of up to 84 months. Upon such request and following the receipt by **us** of any requested information, **we** may offer to extend the cover under this **policy** for a **discovery period** of up to 84 months on such terms and conditions and at such premium as **you** and **us** may agree. Any additional premium will be non-refundable. Any extended cover will only apply to **claims** or any **investigation** arising from conduct before the **change in exposure** and which is notified to **us** before the expiry of the **discovery period**.

In relation to any **subsidiary** that is sold, dissolved or otherwise disposed of prior to the expiration of the **insurance period**, this **policy** will provide cover in respect of any **claim** that relates to conduct occurring prior to the sale, disposal or dissolution of such **subsidiary**.

2.3 Discovery period following non-renewal

If, on expiry, any coverage clause or component under this **policy** is neither renewed or replaced with a **policy** of insurance providing such coverage with any insurer, the **policyholder** is entitled to a **discovery period** of:

- (a) 30 days automatically for no additional premium;
- (b) subject to the payment of an additional premium of 100% of the **premium**, 12 months from the expiration of **insurance period**; or

- (c) up to 84 months, as may be requested from the expiration of the **insurance period** on such terms and for a **premium** that will be determined by **us**;

provided that:

- (i) the extended cover only applies in respect of a **wrongful act, dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**.
- (ii) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within 30 days of the expiration of the **insurance period** and is only effective upon payment of the additional premium.
- (iii) **we** will not be liable to make any payment in respect of any **claim** first made against an **insured** or **investigation** first commenced during the **discovery period** if at any time the **insured** obtains or is entitled to cover under any other management liability insurance policy which provides cover to the same effect as this **policy**.
- (iv) the **insured** will not have the right to purchase the 12 month **discovery period** under this Extension in the event of cover being available under Extension 2.2 (Discovery period following a change in exposure) above.
- (v) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided.
- (vi) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension.
- (vii) any **premium** earned will be non-refundable.

Extensions Applicable to All Insuring Clauses Except Insuring Clauses 1.6 (Comprehensive Crime Cover) and 1.7 (Tax Audit Expenses)

2.4 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a **claim** is withdrawn. If such **claim** is finally determined not to be covered or is excluded under this **policy**, then all such **costs** already advanced must be repaid to **us**.

2.5 Continuity of Cover

Notwithstanding Exclusion 3.9 (Prior or Pending Proceedings), coverage is provided for **claims** or circumstances, which were required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **policy** is a renewal or replacement of, provided always that:

- (a) the **claim** or circumstance which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) occurred after the **continuous cover date** specified in the **schedule**; and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **us** in respect of the **claim** or circumstance; and
- (c) the **insured** has maintained without interruption management liability insurance with an insurer from the **continuous cover date** stated in the **schedule**; and
- (d) the **insured** has notified such a **claim** or circumstance under the prior management liability policy or similar insurance and is unable to obtain cover as it has been notified after such policy expired; and
- (e) the cover provided by this Extension will be in accordance with all the terms and conditions (including, for the avoidance of doubt, the **limit of liability** and **excess** amounts, or any sub-limit, including the impairment of such limit of liability arising from any other claims under that policy) of the policy under which the **claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **claim** or circumstance than the provisions of this **policy**.

2.6 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to the sub-limit specified in the **schedule** in the aggregate for all **claims** made during the **insurance period** provided consent is obtained from **us** within

30 days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

Extension Applicable to Insuring Clause 1.1 (Insured Person Liability) Only

2.7 Additional Limit of Liability for Insured Persons

If the **limit of liability** is completely eroded due to **our** payment of **loss** and after all other indemnification available to the **insured persons** has been exhausted, it is agreed that the **limit of liability** will be reinstated by up to 20% of the **limit of liability** for all new **claims** made against each individual **insured person** during the **insurance period** provided that:

- (a) the total reinstated **limit of liability** applicable to all **insured persons** combined does not exceed the original amount of the **limit of liability**; and
- (b) if the **policyholder** has in effect any policy or policies providing coverage in excess of this **policy**, the reinstated **limit of liability** provided by this Extension will take effect after the total exhaustion of any amounts payable under any such other policy but before any similar reinstatement provision contained in any such other policy is given effect.

Extensions Applicable to Insuring Clauses 1.1 (Insured Person Liability) and 1.2 (Insured Person Reimbursement Liability) Only

2.8 Environmental Reporting Breach

We will pay **loss** to or on behalf of an **insured person** in respect of a **claim** first made during the **insurance period** arising from an **environmental reporting breach**.

2.9 Internet Liability

We will pay **loss** to or on behalf of an **insured person** in respect of a **claim** first made during the **insurance period** arising from an **internet liability breach**.

2.10 Outside Directorship Liability

We will pay on behalf of any **insured person** any **loss** to or in respect of any **claim** made against them while serving or acting in their capacity as a director, officer, member, designated member, trustee, council member, committee member, shadow director, governor or the like of any not-for-profit organisation (being an organisation other than the **policyholder**) provided that the **insured person** holds or held such position at the specific request or direction of the **policyholder**.

This cover will apply in excess of any other specific insurance protecting the **insured person** and any other indemnity available to the **insured person** from any such other organisation.

This Extension does not apply to:

- (a) any positions held in any such other organisation that is incorporated or domiciled in the **USA**; or
- (b) any positions held in any such other organisation which has, has had or intends to have its securities traded on an exchange.

2.11 Identity Fraud

If any party other than an **insured person** enters into any agreement with any third party entity fraudulently representing themselves as any **insured person**, then **we** will pay any reasonable fees, **costs** and expenses incurred by the **insured person** in establishing that such fraudulent misrepresentation has occurred, should the third party entity seek to enforce such agreement against the **insured**.

2.12 Pollution Defence Costs

We agree to pay **costs** to or on behalf of any **insured person** in respect of any **claim** otherwise excluded by General Exclusion 5.3 (Pollution) in the General Terms and Conditions.

2.13 Retired or Resigned Insured Persons

If this **policy** is neither renewed nor replaced by any insurance granting broadly comparable cover benefiting the **retired** or **resigned insured persons**, then coverage under this **policy** will automatically extend to a **claim** made against the **retired** or **resigned insured persons**, provided however that such **claim**:

- (a) is made within a period of 84 months after the date of non-renewal or non-replacement of this **policy**; and
- (b) arises from a **wrongful act**, or other act, error or failure to act that is committed or alleged to have been committed or an **investigation** into conduct prior to the expiry date of the **insurance period**.

This Extension does not apply to any **retired** or **resigned insured persons** who become **retired** or **resigned insured persons** as a result of an occurrence as outlined in Extension 2.2 (Discovery period following a change in exposure) taking place or following the liquidation, administration, receivership or insolvency of the **policyholder**.

Extensions Applicable to Insuring Clauses 1.1 (Insured Person Liability), 1.2 (Company Reimbursement Liability), and 1.3 (Entity Liability) Only

2.14 Civil Penalties

The definition of **loss** is extended to include any civil fines or civil penalties that are insurable under the law applicable to this **policy**.

Extensions Applicable to Insuring Clauses 1.1 (Insured Person Liability), 1.2 (Company Reimbursement Liability), and 1.5 (Superannuation Trustee Liability) Only

2.15 Assets and Liberty Costs

We agree to pay, where permitted by law, the **prosecution costs** of an **insured person** to obtain the discharge or revocation of a **judicial order** entered during the **insurance period** imposing:

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

2.16 Extradition Bail Bond Costs

We will pay **extradition bail bond costs** on behalf of any **insured person**.

2.17 Public Relations Expenses

At the election of the **policyholder**, we will pay the **public relations expenses** of an **insured person**:

- (a) in connection with a **claim** for extradition of such **insured person**;
- (b) to mitigate any adverse effect on such **insured person's** reputation by disseminating findings which exonerate the **insured person** from fault, liability or culpability in connection with a **claim** that is

- covered under this **policy**, provided such findings are made by a court with jurisdiction to finally dispose of such **claim** (including the outcome of any appeal in relation to such **claim**); or
- (c) following a raid on, or on-site visit of the **company**, which first takes place during the **insurance period** by any regulator that involves the production, review, copying or confiscation of files or interviews of any **insured person**. For the avoidance of doubt, this includes a public announcement relating to the foregoing.

Extensions Applicable to Insuring Clause 1.3 (Entity Liability) Only

2.18 Crisis Costs

We will pay **crisis loss costs** on behalf of the **company**.

Extensions Applicable to Insuring Clause 1.6 (Comprehensive Crime Cover) Only

2.19 Direct Financial Loss Investigator Costs – Policyholder

We agree to reimburse the **policyholder** for their costs of hiring a **loss investigator** selected by the **policyholder** with **our** prior written consent (which will not be unreasonably delayed or withheld), which they incur in order to provide a **proof of loss** to **us**, following the **discovery** of a **direct financial loss** during the **insurance period**.

2.20 Direct Financial Loss Investigator Costs – ProRisk

If the **policyholder** elects not to use their own **loss investigator**, **we** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide us with their **proof of loss** following the **discovery** of a **direct financial loss** during the **insurance period**.

Value Added Benefits

2.21 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on our panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim**. **We** consent to that firm listed on our panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

2.22 Whistleblower Hotline

The **insured** and their internal and external stakeholders are entitled to access and use the ProRisk Whistleblower Hotline throughout the **insurance period**.

SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment for **loss**:

3.1 Assumed Liability

on account of any **claim** arising from or directly or indirectly attributable to or in consequence of any obligation assumed by the **insured** under any agreement, except that this exclusion does not apply to any liability which is, or would have been, implied by law in such agreement or would have separately arisen.

3.2 Bodily Injury and Property Damage

on account of any **claim** arising from, based upon or in consequences of bodily injury, sickness, disease, death or emotional distress, mental anguish or damage to, destruction of, impairment or loss of use of any property.

This exclusion will not apply:

- (a) to any **claim** for a **wrongful act** under Insuring Clause 1.4 (Employment Practices Liability) for emotional distress or mental anguish;
- (b) to any **claim** for harassment of or discrimination against any natural person third party who is not and has not been an **employee**; or
- (c) to any **claim** for which cover applies under Insuring Clause 1.8 (Statutory Liability).

3.3 Conduct

on account of any **claim** arising from, based upon or attributable to:

- (a) the gaining of any personal profit, remuneration or advantage to which the **insured** is not legally entitled; or
- (b) the committing of any dishonest or fraudulent act or failure to act.

For the avoidance of doubt, **we** will not rely on this exclusion until the conduct in question is established by a final judgment, or any other final adjudication, including a written admission or formal verbal admission under oath by any **insured** that the relevant conduct did in fact occur. This exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001 (Cth)* applies. Furthermore, this exclusion will not apply in respect of cover afforded under Insuring Clause 1.6 (Comprehensive Crime Cover).

3.4 Insolvency

for any **claim, investigation, loss or direct financial loss** arising from or in any way whatsoever connected with the insolvency, liquidation, bankruptcy, receivership or administration of the **company**, or its actual or alleged inability to meet its debts as and when they fall due

3.5 Insured versus Insured

arising from any **claim** brought or maintained by or on behalf of any **insured** except:

- (a) any **claim** for a **wrongful act** under Insuring Clause 1.4 (Employment Practices Liability); or
- (b) any **claim** by any past **insured person**.

3.6 Intellectual Property

on account of any **claim** based upon, arising from, or attributable to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

3.7 Major Shareholder

on account of any **claim** brought or maintained by a shareholder of the **company** who owns or controls more than 15% of the issued capital of the **company**.

3.8 Prior Policy

arising from, based upon or attributable to any **claim, investigation** or circumstances of which notice has been given or was required to be given in accordance with the duty of disclosure contained in section 21 of the *Insurance Contract Act 1984* (Cth), under any policy of insurance which this **policy** renews, replaces or follows in whole or in part, or for which notice could have been given if such a policy had been in force.

3.9 Prior or Pending Proceedings

arising from any **claim** or **investigation** relating to, based upon or attributable to any writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against the **insured** which existed prior to or were pending at the earlier of:

- (a) the inception date of this **policy**;
- (b) the original date upon which insurance providing like coverage to this **policy** was affected and continually maintained up to the inception date of this **policy**;

where such a **claim** or **investigation** arises from any matter, fact, situation or circumstance substantially the same as those underlying or alleged in any such claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment.

3.10 Products Liability and Workmanship

arising from any **claim** based upon, arising from or attributable to:

- (a) the manufacture, construction, installation, assembly, processing, alteration, repair, repackaging, servicing or importing of any products by the **insured** or any product recall; or
- (b) the workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly by the **insured** or from supervision of such workmanship.

3.11 Professional Services

arising from any **claim** or **investigation** based upon, arising from or attributable to the:

- (a) provision of (or failure to provide) professional services or professional advice to a third party;
- (b) conduct of the **company's** business activities; or
- (c) the work provided to a third party by the **company**.

3.12 Public or Private Offerings of Securities or any other Equitable Instrument

arising from any **claim** based upon, arising from or attributable to any public or private sale, offering or issue of any shares, securities or other similar instruments of the **company** or the prospectus or placing or offer document relating to any such sale, offering or issue of such shares, securities or instruments, or any other equitable instrument of any **company**.

3.13 Superannuation

arising from any **claim** based upon, arising from or attributable to any actual or alleged violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund, other than where covered under Insuring Clause 1.5 (Superannuation Trustee Liability).

3.14 Territorial Limits

- (a) arising from any **claim** brought and maintained; or
- (b) any **direct financial loss** that occurs;

outside of the **territorial limits**.

3.15 Trade Practices (Fair Trading) Legislation Cover

arising from, any **claim** based upon, arising from or attributable to any actual or alleged violation of any law, rule or regulation anywhere in the World, which regulates or restricts anti-trust or monopolistic behaviour or practices in restraint of trade, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices in trade and commerce or tortious interference in another's business or contractual relationships.

3.16 Trading Debts

arising from any **claim** based upon, arising from or attributable to any trading debt of the **company** in conducting its business.

Additional Exclusions specific to Insuring Clause 1.3 (Entity Liability) only

3.17 Additional Exclusions specific to Insuring Clause 1.3 (Entity Liability) only

We will not be liable under Insuring Clause 1.3 (Entity Liability) of the **policy** for any **loss** arising from:

- (a) a **wrongful act** under Insuring Clause 1.4 (Employment Practices Liability), or any obligation pursuant to any law, regulation, or industrial instrument in respect of workers' compensation, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or **industrial instrument**;
- (b) a **wrongful act** under Insuring Clause 1.8 (Statutory Liability);
- (c) taxes or sums payable in lieu of taxes;
- (d) any actual or alleged breach of any law, whether statutory, regulatory or common law that regulates or restricts anti-trust or cartel conduct, business competition, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships;
- (e) any actual or alleged contractual liability of the **company** whether under any express or implied contract or agreement (including but not limited to any guarantee or warranty);
- (f) fines or penalties;
- (g) non-monetary relief or **claims** seeking only injunctive relief;
- (h) the repayment or refund by the **company** of any amount paid to any party for services, advice or goods of any kind whatsoever;
- (i) any trading debt or business liability of the **company**;
- (j) any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any **industrial instrument**; or
- (k) any **claim** against the **company** in respect of stock, shares, stock options, share options or any entitlement or right of that entity, trust or person to any monetary amount, including but not limited to dividends or amounts calculated by reference to dividends by a shareholder.

Additional Exclusions specific to Insuring Clause 1.4 (Employment Practices Liability) only

3.18 Additional Exclusions specific to Insuring Clause 1.4 (Employment Practices Liability) only

We will not be liable under Insuring Clause 1.4 (Employment Practices Liability) of the **policy** for any **loss** arising from:

- (a) obligation, or actual or alleged breach of an obligation, under any law, regulation or **industrial instrument** providing for paid or unpaid leave of any kind;
- (b) obligation, pursuant to any law, regulation, or **industrial instrument** providing for the payment of workers' compensation entitlements, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, or social security benefits;
- (c) **employment related benefits** or amounts calculated by reference to any **employment related benefits**;

- (d) costs incurred by the **company** to modify any building or property, or to provide any service in order to make such building or property more accessible for accommodating a disabled person;
- (e) costs incurred by the **company** in connection with any educational or corrective measures undertaken under order of a Court of competent jurisdiction, arising from a **wrongful act**;
- (f) specified sums payable by the **company** to an **employee** pursuant to a contract of employment or **industrial instrument**; or
- (g) **benefits**.

Additional Exclusions specific to Insuring Clause 1.5 (Superannuation Trustee Liability) only

We will not be liable under Insuring Clause 1.5 (Superannuation Trustee Liability) of the **policy** for any **loss**:

3.19 Benefits

based upon, arising from or attributable to any actual or alleged failure to pay **benefits**.

3.20 ERISA

based upon, arising from or attributable to any actual or alleged breach of *The Employee Retirement Income Security Act of 1974* or any other statute, legislation or code governing or relating to superannuation that exists in the **USA**.

3.21 Failure To Fund

based upon, arising from or attributable to any actual or alleged failure to:

- (a) fund a **superannuation fund**;
- (b) collect contributions due to a **superannuation fund**; or
- (c) ensure that adequate contributions are made to a **superannuation fund**.

Additional Exclusions specific to Insuring Clause 1.6 (Comprehensive Crime Cover) only

3.22 Additional Exclusions specific to Insuring Clause 1.6 (Comprehensive Crime Cover) only

We will not be liable under Insuring Clause 1.6 (Comprehensive Crime Cover) of the **policy** to make any payment for any **loss**:

- (a) which can only be proved by:
 - (i) a profit and loss computation or comparison; or
 - (ii) a comparison of inventory records with an actual physical count;
- (b) arising from the accessing and dissemination of any confidential information, including but not limited to patents, trademarks, copyrights, customer information, computer programs and trade secrets;
- (c) arising from any **dishonest act** committed after any **director** or **officer** has become aware of a previous **dishonest act**, provided that this exclusion will not apply if the **director** or **officer** who discovers any such **dishonest act**, acts in collusion with the **employee**;
- (d) arising from any **dishonest act** committed by a person who owns or controls more than 5% equity in the **policyholder**;
- (e) not directly associated with the incident that caused **you** to claim, including but not limited to loss of income, interest or dividends not realised or received by the **policyholder** or by any other person(s) or company because of a **direct financial loss**;
- (f) arising from any **dishonest act** committed by any **director** whether acting alone or in collusion with others;
- (g) arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like, unless the **direct financial loss** is a result of a **dishonest act** which results in the **employee** making an improper financial gain other than salary,

- wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (h) arising from any extortion or kidnap and ransom;
 - (i) by an **employee** (acting alone or in collusion with others) taking property from the **policyholder's** bank account (or other similar account held with an Authorised Deposit Taking Institution) where the **employee** is able to sign cheques, execute transfers or otherwise withdraw funds from such bank account (or other similar account held with an Authorised Deposit Taking Institution) without a second signatory or similar approval for that withdrawal by another **insured person** (or delegate of another **insured person**); or
 - (j) arising from a failure of an **insured person** to independently verify a request by a payee (or an alleged payee) to change or redirect payment to a different bank account (or similar account held with an Authorised Deposit Taking Institution).

Additional Exclusions specific to Insuring Clause 1.7 (Tax Audit Expenses) only

3.23 Additional Exclusions specific to Insuring Clause 1.7 (Tax Audit Expenses) only

We will not be liable under Insuring Clause 1.7 (Tax Audit Expenses) of the **policy** for any **loss**:

- (a) arising out of any income return that has not been prepared or reviewed prior to dispatch by a **tax agent** of the **policyholder**. However, this exclusion does not apply to any return for:
 - (i) Goods and Services Tax;
 - (ii) income derived from any payment from superannuation, pension or other retirement benefit; or
 - (iii) wages and related benefits;
- (b) due to failure to lodge taxation or any other return within the time limit prescribed by statute or any extension of time granted by the **authority**;
- (c) due to making a statement to the **authority** or **tax agent** that omits material information or is false or misleading; or due to bringing about a **tax audit** by failing to pay all taxes by the due date or within any extension of time granted by the **authority**;
- (d) relating to any tax, interest, fine, penalty or court costs that the **policyholder** may be ordered to pay by any **authority** or court;
- (e) that the **policyholder** is unable to recover because of a contract or agreement that the **policyholder** has entered into, which excludes or limits rights to recover that amount;
- (f) arising from any **claim** relating to any **tax audit** for which notice, or information was received by the **policyholder** or its **tax agent** before the **insurance period**;
- (g) arising from or relating to any **claim** or **claims** caused by or arising out of any inquiry from an **authority** which is not related to either an identified intention to conduct a **tax audit** or is not directed at obtaining information or data for a possible future **tax audit**;
- (h) relating to any **claim** or **claims** caused by or arising out of any improper, unwarranted or unjustified refusal or failure to comply with any request made by the **authority**. This exclusion does not apply when, in accordance with written professional advice, the **policyholder** refuses or fails to comply with an authorisation under section 263 of the *Income Tax Assessment Act 1936 (Cth)*, or the *Income Tax Assessment Act 1997 (Cth)*;
- (i) consisting of or relating to fees, costs and expenses which are ordinarily associated with the maintenance and upkeep of the **policyholder** accounts, returns, taxation and financial records and the preparation prior to lodgement of accounts, returns, taxation and financial records as required by any relevant legislation;
- (j) arising out of any **tax audit** concerning income earned, or where the source of income is outside Australia or New Zealand, or where the services giving rise to the **tax audit** are performed outside of Australia or New Zealand;
- (k) relating to any **claim** arising under customs legislation;
- (l) relating to any **tax audit professional fees** or other fees to restore or re-create records that are ordinarily maintained or retained;
- (m) arising out of the **policyholder** not making a full and complete statement of the total income and profits or gains of a capital nature derived and of any deductions or capital losses during each tax year; or
- (n) arising out of the **policyholder** not being registered for the purpose of Goods and Services Tax.

Additional Exclusions specific to Insuring Clause 1.8 (Statutory Liability) only

3.24 Certain Acts

We will not be liable under Insuring Clause 1.8 (Statutory Liability) of the **policy** to make any payment for any **loss** on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by:

- (a) Sections 182, 183, 588G, 601FD, 601FE, 601JD of the *Corporations Act 2001 (Cth)* or any similar law, and any amendments, consolidations or enactments of that Act, including duties of directors, officers and employees to not misuse their position or information, a director's duty to prevent insolvent trading, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity;
- (b) the Fair Trading Acts of the States and Territories, the *Competition and Consumer Act 2010 (Cth)* and any similar law of any state or territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services; and
- (c) any **Act** regulating vehicular, air or marine traffic.

SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

- 4.1 Act** means any Act of any parliament or legislative assembly of the Commonwealth of Australia, and/or of any State or Territory of Australia, including any:
 - (a) subordinate or delegated legislation or code, rules, regulations, or bylaws made under those Acts; and
 - (b) any amendment, enactments, or consolidation of any of the above Acts or legislation.
- 4.2 Authority** means the Australian Taxation Office or a revenue office of an Australian State or Territory, as appropriate to the type of designated tax, or a State or Territory department responsible for workers' compensation.
- 4.3 Benefits** means any obligation to pay superannuation or pension entitlements, which constitutes money or property or other entitlement.
- 4.4 Claim** means:
 - (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against the **insured** alleging a **wrongful act**;
 - (b) any formal notice of criminal, civil or arbitration proceedings (including **extradition proceedings** or execution of a warrant for arrest) against the **insured** alleging a **wrongful act**; or
 - (c) an **investigation**.
- 4.5 Company** means the **policyholder** and any **subsidiaries**.
- 4.6 Corporate trustee** means any incorporated entity owned and controlled by the **policyholder** whose sole and specific function is to act as trustee for a **superannuation fund**.
- 4.7 Costs** means **prosecution costs, investigation costs** and all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

Costs does not mean any overheads of the **policyholder** or any salaries, commissions, expenses or other **benefits** associated with the remuneration of the **insured persons**.

4.8 Crisis event means any of the following unforeseen events occurring and notified to **us** during the **insurance period** where, in the reasonable opinion of the **policyholder**, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenue for the coming 12 months of the **policyholder** if left unmanaged:

- (a) the sudden, unexpected death or disability of any **director** or **officer**;
- (b) the criminal conviction of any **director**, **officer**;
- (c) the sudden loss of a major customer, contract or credit facility;
- (d) actual or alleged **employee** workplace violence;
- (e) the first apparent unauthorised intrusion into the computer facilities of the **policyholder**;
- (f) a recall or boycott of any product;
- (g) a manmade disaster; or
- (h) any criminal or fraud investigation.

Crisis event is an event that affects the **policyholder** specifically and does not include an event that affects an industry in general or a declared pandemic.

4.9 Crisis loss costs means:

- (a) the reasonable costs and expenses paid by the **policyholder** for external crisis management services provided in response to a **crisis event** within the first 30 days after the **crisis event**; or
- (b) any reasonable professional fees, costs or expenses of any accredited:
 - (i) psychologist, psychiatrist or other equivalent medical or health counsellor; or
 - (ii) tax advisor, retained by an **insured person** with **our** prior written consent (which will not be unreasonably delayed or withheld), in respect of a covered **claim**.

4.10 Designated tax means:

- (a) any tax assessable in accordance with the provisions, as amended, of the:
 - (i) *Income Tax Assessment Act 1936 (Cth)*;
 - (ii) *Income Tax Assessment Act 1997 (Cth)*;
 - (iii) *Fringe Benefits Tax Assessment Act 1986 (Cth)*;
 - (iv) *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
 - (v) *Superannuation Guarantee (Administration) Act 1992 (Cth)*;
 - (vi) *Termination Payments Tax (Assessment and Collection Act) 1997 (Cth)*;
- (b) any legislation of an Australian State or Territory relating to payroll tax, stamp duties or other State or Territory taxes; or
- (c) wages declarations under Australian State or Territory workers' compensation legislation.

4.11 Direct financial loss means loss of **property** (including through electronic or cyber means) sustained by the **company** resulting from a **dishonest act**.

It does not include:

- (a) salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**;
- (c) physical destruction to any premises, or to any property situated on the premises;
- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **direct financial loss** covered by this **policy**;
- (f) recovery costs;
- (g) interest or other loss that is not directly associated with the incident that caused **you** to claim;
- (h) the personal assets or property of an **insured person** (for the avoidance of doubt, this includes an **insured person's** property that would otherwise be covered under a home and contents policy); or
- (i) loss of **property** or other consideration surrendered or intended to be surrendered as payment for on behalf of an **insured person**.

4.12 Director or officer means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, manager or trustee of the **corporate trustee** or the **company**;

- (b) a shadow director of the **corporate trustee** or the **company** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) a representative or appointee of the **corporate trustee** or the **company** who is not defined above but only in respect of a **loss** that is covered under Extension 2.5 (Continuity of Cover) of this **policy**;
- (d) an **employee** of the **corporate trustee** or the **company** who:
 - (i) carries out a managerial or supervisory function for the **corporate trustee** or the **company**;
 - (ii) has a **claim** under Insuring Clause 1.4 Employment Practices Liability made against them; and
 - (iii) is joined as a party to any **claim** against any person defined above;
- (e) the lawful spouse or domestic partner of a person defined above, where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner and not in respect of any conduct by that person in his or her own right; or
- (f) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of the **corporate trustee** or the **company** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency officeholder of the **corporate trustee** or **company**.

4.13 Discovered or discovery means when any **director** or **officer** (who is not in collusion with an **employee** or third party who has committed or is attempting to commit a **dishonest act**) becomes aware of any facts which would cause a reasonable person to believe that a **direct financial loss** which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **direct financial loss** are not known at that time. Such awareness constitutes **discovery** by the **policyholder**.

4.14 Discovery period means the additional period in which **you** are able to notify **us** of a **wrongful act**, an **investigation** or a **dishonest act** and other conduct wholly committed before the end of the **insurance period**, the duration of which is specified in:

- (a) Extension 2.2 (Discovery Period following a Change in Exposure); or
- (b) Extension 2.3 (Discovery Period following Non-Renewal);

commencing from the date of expiry of the **insurance period**. The **discovery period** will be applied to the **policy** by way of endorsement and will commence from the date of expiry of the **insurance period**.

4.15 Dishonest act means any fraudulent or dishonest act committed by an **employee** (acting alone or in collusion with others) or any other third party.

4.16 Employee means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **company** who is employed under a contract of service with the **company** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **company** under the direction and control of the **company**;
- (c) in relation to Insuring Clause 1.6 (Comprehensive Crime Cover), the **employee** must also be under the direction and control of the **company**.

For the avoidance of doubt, **employee** does not include independent contractors or labour hire personnel.

4.17 Employment related benefits means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

4.18 Environmental reporting breach means any actual or alleged misrepresentation or failure to provide written disclosure of information relating to climate change. Such written disclosure includes but is not limited to any mandatory **greenhouse gas inventory** or similar document issued by the **policyholder**.

Environmental reporting breach does not include any actual or alleged act, error or failure to act allegedly committed in connection with the provision of professional services to a third party, including any alleged breach of any contract for the provision of professional services and/or advice to such third party by any **insured**.

4.19 Extradition bail bond costs means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an **insured person's** contingent obligation for bail required by a court in respect of an **extradition proceeding**.

4.20 Extradition proceeding means any action or proceeding commenced in any jurisdiction seeking the extradition of an **insured person**. Any such action or proceeding will be deemed for the purposes of this **policy** to commence upon the receipt by an **insured person** of notice in writing from an official governmental, regulatory or prosecuting body stating that a request for extradition of an **insured person** has been made or will be made.

4.21 Extranet means a restricted-access group of inter-connected electronic networks accessible via a gateway or portal.

4.22 Individual trustee means any natural person who was prior to, or becomes, or is during the **insurance period** an appointed trustee of a **superannuation fund** or a **director** or **officer** of a **corporate trustee**.

4.23 Insured, you and your means:

- (a) the **policyholder**;
- (b) any **insured persons**;
- (c) a **corporate trustee**; or
- (d) an **individual trustee**.

4.24 Insured person means:

- (a) any **director**; or
- (b) **officer**.

4.25 Internet means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.

4.26 Internet liability breach means the actual or alleged disparagement, defamation of or harm to the reputation or character of any natural person or organisation, by an **insured person** directly resulting from communications which utilise the **internet** and media services utilising the **internet** via an electronic network owned and controlled by the **policyholder**.

Internet liability breach does not include:

- (a) any actual or alleged infringement of intellectual property rights;
- (b) any failure to act by the **insured** to remove any statement or publications from any **internet, intranet** or **extranet** site; or
- (c) any statement or publication made to or contained on any **open site** or **moderated site** by the **insured** and/or any **employee** or third party.

4.27 Intranet means an electronic network owned and controlled by the **insured** which contains information about the business of the **insured** and is only accessible to designated individuals including **employees** of the **policyholder** and not to the general public.

4.28 Investigation means any formal investigation, inquiry or examination, where an **insured person** is legally compelled to comply with and is commenced by written notice. For the avoidance of doubt, an **investigation** does not include a risk management visit (or equivalent) by a regulator of the **policyholder**. There is no requirement that the **investigation** allege that a **wrongful act** has occurred.

4.29 Investigation costs means reasonable legal fees, costs and expenses incurred by the **insured persons** in their representation (or in preparation for their representation) at an **investigation** in which the **insured persons** first become involved during the **insurance period**.

Investigation costs does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

4.30 Judicial order means:

- (a) an interim or interlocutory **judicial order**; or
- (b) with respect to any proceeding concerning the deportation of any **insured person**, any judicial order, entered against an **insured person** in connection with a **claim** against them that is otherwise covered by this **policy**.

Judicial order does not include a final order made in the disposition or adjudication of such **claim**.

4.31 Loss means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

Loss does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award in any **claim**;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) criminal fines or criminal penalties;
- (e) **employment related benefits**;
- (f) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to a **wrongful act** or the costs of reinstatement of any **employee**;
- (g) any refund of fees;
- (h) internal or overhead expenses of any **insured**;
- (i) the cost of complying with any non-monetary order or non-monetary relief;
- (j) **benefits**;
- (k) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw;
- (l) liquidated damages;
- (m) any actual or alleged violation of the responsibilities, obligations or duties imposed by Sections 182, 183, 601FD, 601FE, 601JD of the *Corporations Act 2001 (Cth)*, or any similar law anywhere in the world, and any amendments to that Act – including duties of directors, officers and employees to not misuse their position or information, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity;
- (n) a legal prohibition; or
- (o) a prohibition in the Articles of Association, charter, bylaws, contract or similar documents of the **policyholder**.

4.32 Loss investigator means a suitably qualified forensic accountant or other consultant, who does not have a conflict of interest, retained to establish the nature and extent of any **direct financial loss**.

4.33 Moderated site means any **internet**, **intranet** or **extranet** site where content is checked for compliance with pre-set content standards before or as soon as reasonably practicable after it is published.

4.34 Official body means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or the conduct of an **insured person** in their insured capacity.

4.35 Official detention means confinement of an **insured person** in secure custodial premises, operated by or on behalf of a governmental or judicial agency in connection with a **claim** against such **insured person** and either without charge or without a judicial finding of culpability or liability in that **claim**.

4.36 Open site means any **internet**, **intranet** or **extranet** site on which content can be published by contributing parties without registration.

4.37 Proof of loss means documented evidence that the **policyholder** has sustained a **direct financial loss**. A **proof of loss** may include the following, however these items should not be seen as limiting the information which could form part of the **proof of loss**:

- (a) the name of the entity claiming under the **policy**, and details of their relationship to the **policyholder**;
- (b) the policy number of the **policy**;
- (c) the name of the alleged perpetrator (if known);
- (d) a description of the events which led to the **discovery** of the **direct financial loss**;
- (e) a chronology of all relevant facts;
- (f) a description of the alleged **employee** or third party's modus operandi;
- (g) Statutory Declarations from witnesses;
- (h) complete documentary evidence to support that the **policyholder** has sustained a **direct financial loss**, including but not limited to receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
- (i) photographs, video or closed-circuit television footage of **direct financial loss** occurring;
- (j) any internal investigation reports;
- (k) police report/s and/or any statement/s made to the police;
- (l) a signed confession; and/or
- (m) any other document or other form of evidence which may be relevant to the quantification of a **direct financial loss**.

4.38 Property means money, securities and other property owned by the **policyholder** or for which it is legally liable. **Property** does not include the personal assets or property of the **policyholder** or an **insured**, including an **insured's** property that would otherwise customarily be covered under a home and contents insurance policy or comprehensive motor insurance policy.

4.39 Prosecution costs means reasonably necessary legal fees, costs and expenses incurred by an **insured person** with our prior written consent to bring legal proceedings, but only for the purposes set out in Extension 2.15 (Assets and Liberty Costs).

4.40 Public relations expenses means any reasonably necessary fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).

4.41 Retired or resigned insured person means any **insured person** who voluntarily ceases to hold such a position during the **insurance period** and who does not otherwise cease to hold such a position as a direct result of disqualification or an occurrence as outlined in Extension 2.2 (Discovery Period Following a Change in Exposure), following a **change in exposure** taking place.

4.42 Superannuation fund means any superannuation plan, trust or scheme established and maintained solely for the benefit of the **policyholder** and its **employees**.

4.43 Tax audit means an audit by an **authority** which is in respect of the **company's** liability to pay any **designated tax** (including the amount of such tax payable) following lodgement of a return for that **designated tax**.

4.44 Tax agent means an accountant who is a member of a nationally recognised accounting body or any person who is recognised by an **authority** as a registered **tax agent**, as appropriate to the type of **designated tax**, who prepares returns and statements required by that **authority** in respect of the **policyholder's** liability to pay a **designated tax**, including supervision of the preparation of, and review prior to despatch of, those returns and statements.

Tax agent does not mean an **employee** or any person working for the **policyholder** as a contractor.

4.45 Tax audit professional fees means the reasonable fees, costs and disbursements payable by the **insured** to a registered **tax agent**, financial advisor, financial institution or professional person in connection with a **tax audit** undertaken by an **authority**, for work undertaken up to the completion of that **tax audit**.

4.46 Tax audit professional fees does not mean any fees, costs or disbursements:

- (a) that relate to any subsequent objection lodged with the **authority** in respect of a **tax audit**;
- (b) incurred prior to the commencement of the **tax audit**;
- (c) incurred after the **tax audit** has been completed; or
- (d) incurred after 12 months from the commencement date of the **tax audit**, other than when the **policyholder** can demonstrate to **our** satisfaction that the delay in completing the **tax audit** was caused primarily by the **authority**.

4.47 Trustee means a **corporate trustee** and/or **individual trustee**.

4.48 Wrongful act means:

- (a) with respect to Insuring Clauses 1.1 (Insured Person Liability) and 1.2 (Company Reimbursement Liability), any act, error or failure to act, misstatement, misleading statement, neglect, breach of duty, breach of trust, or breach of warranty of authority, committed or allegedly committed or attempted by an **insured person** in their capacity as such;
- (b) with respect to Insuring Clause 1.3 (Entity Liability), any act, error or failure to act, misstatement, misleading statement, neglect, breach of duty, breach of trust, or breach of warranty of authority, committed or allegedly committed or attempted by a **company**;
- (c) with respect to Insuring Clause 1.4 (Employment Practices Liability), any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:
 - (i) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy;
 - (ii) unlawful termination of employment;
 - (iii) false or misleading advertising or representation involving terms or conditions of employment;
 - (iv) failure to employ, promote or grant tenure;
 - (v) unfair deprivation of career opportunity;
 - (vi) unfair discipline or evaluation of employment performance;
 - (vii) failure to provide or adhere to adequate employment policies or procedures;
 - (viii) violation of any Federal, State or Local statute or regulation governing employment practices;
or
 - (ix) breach of employment contract;with respect to any natural person who was, now is or becomes an **employee** of the **company** including prospective **employee**
- (d) with respect to Insuring Clause 1.5 (Superannuation Trustee Liability), any act, error or failure to act, misstatement, misleading statement, neglect, breach of duty, breach of trust, or breach of warranty of authority, committed or allegedly committed or attempted by a **trustee** in relation to a **superannuation fund**, or any matter claimed against a **trustee** solely by reason of their acting or serving in such capacity;
- (e) with respect to Insuring Clause 1.8 (Statutory liability) an actual or alleged breach of any **Act**.



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