



Directors' & Officers' & Corporate Legal Liability

Policy wording



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Important Notices

Claims Made Insurance

This policy is issued by Delta Insurance Australia Pty Ltd ('Delta', 'we', 'our' or 'us') on a claims made and notified basis. Accordingly, this policy will only apply to claims first made during the policy period or extended reporting period, if applicable, and notified to Delta in writing during the policy period or extended reporting period, if applicable. This policy may not provide cover for any claims or events made against you during the policy period if at any time prior to the commencement of the policy period you became aware of facts which might give rise to those claims being made against you. Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. It provides that where the insured becomes aware of any facts that might give rise to a claim against the insured, provided that the insured notifies the insurer in writing of those facts as soon as reasonably practicable after the insured becomes aware of those facts before the policy period expires, the insurer is not relieved of liability under the contract in respect of a claim which arises out of those facts, merely because when the claim is made, it is made after the policy period has expired.

Insured's Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into an insurance contract, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to insure to you. You have the same duty to disclose before you renew, extend, vary or reinstate an insurance contract.

However, you do not need to tell the insurer anything that:

- reduces the risk the insurer insures you for; or
- is common knowledge; or
- your insurer knows or should know as an insurer; or
- the insurer waives your duty to tell them about.

If you do not tell the Insurer something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Unusual terms

Please read General Condition 1 and 2 (together with your schedule) carefully as these sections detail the limit of liability.

This policy has an individual limit of liability as specified in the schedule (which is an aggregate amount). As this policy can be purchased as part of a package of policies, this policy is also subject to a combined policy aggregate limit of liability. The combined policy aggregate limit of liability is the maximum amount that the insurer will pay for all loss payable under all the policies you have purchased from the insurer.

The limit of liability for this policy is a sub-limit of the combined policy aggregate limit of liability (and is not in addition to it). Once the limit of liability for each individual policy is exhausted then the insurer will have no liability in excess of that limit of liability even if the combined policy aggregate limit of liability has not been exhausted.

Once the combined policy aggregate limit of liability has been exhausted this will mean that no further loss is payable by the Insurer even if individual limit of liability for a particular policy (including this one) has not been exhausted. If you have any questions about this then please contact your broker.

Please also note General Condition 5.13, which prevents the insurer from providing cover, benefits or paying claims where that would expose the Insurer to sanctions, prohibitions or restrictions.

Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (Privacy Act). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.



Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse and Loss and from unauthorised access, modification, or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, Claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance Australia or in the first instance:

Managing Director
Delta Insurance Australia Pty Ltd
Email: complaints@deltainsurance.com.au
Telephone: 07 3017 4720
Post: GPO BOX 1832, Brisbane, QLD, 4001, Australia

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: 02 8298 0783
Post: PO Box R1745, Royal Exchange NSW 1225

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply. You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit

The Underwriters accepting this Insurance agree that

- i. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii. any summons to be served upon the Underwriters may be served upon:

Allied World Assurance Company (Australia Branch)
Level 21, 264 George Street, Australia Square,
Sydney NSW 2000, Australia

and,

Lloyd's Underwriters'
General Representative in Australia
Post: PO Box R1745, Royal Exchange NSW 1225

who has authority to accept service on the Underwriters' behalf;

- iii. if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.



Claims Notice

In the event of a claim arising under this Insurance, notice should be given as soon as possible to:

Delta Insurance Australia Pty Ltd
Email: claims@deltainsurance.com.au
Telephone: (07) 3017 4720
Post: GPO BOX 1832, Brisbane QLD 4001

Goods and Services Tax (GST)

Where you are registered for GST, you must tell Delta the nature and extent of any entitlement you have to an input tax credit at or before the time a Claim is made under this Policy. Where the Insurer makes a payment under this Policy, the amount of the payment will be reduced by the amount of any input tax credit to which you are or may, in the opinion of the Insurer, be entitled to Claim.

The amount of the applicable Retention is calculated after deduction of the amount of any input tax credit that you are or may, in opinion of the Insurer be entitled to Claim. The Insurer will not be liable to pay any GST, or any fine, penalty or charge that you may be liable for arising from your misrepresentation of or failure to disclose the proper input tax credit entitlement on the premium relating to this Policy.

GST and 'input tax credit' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Interpretation

The definitions can be found in Section 6 of this Policy. Defined words appear in bold print. Reference to:

- the singular includes the plural and vice versa;
- the masculine includes the feminine and vice versa;
- a statute, statutory instrument, regulation or order includes any amendment, superseding, substitution, replacement or re-enactment of that statute, statutory instrument, regulation or order. References to any statute, statutory instrument, regulation or order shall also refer to such statute, statutory instrument, regulation or order commencing after the date of this Policy which contain similar subject matter to the statute, statutory instrument, regulation or order referred to in this Policy, regardless of whether the statute, statutory instrument, regulation or order is expressed or intended to supersede, substitute or replace the relevant statute, statutory instrument, regulation or order;
- any reference to a "person" (but not a "natural person") includes a natural person, entity or organisation.

Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses, and discloses your information, please read our privacy policy located at www.deltainsurance.com.au or alternatively you can contact us at 07 3017 4720.

THIS POLICY SETS OUT THE TERMS UPON WHICH THE INSURER AGREES TO INSURE THE INSURED IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM. THE INSURING CLAUSES AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.



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Directors & Officers' & Corporate Legal Liability

In consideration of the payment of the **Premium**, and subject to the **Conditions**, the **Insurer**, and the **Policyholder** on behalf of all **Insureds** agree as follows:

1. Insuring Clauses

1.1. Insured persons

The **Insurer** will pay on behalf of the **Insured Persons** any **Loss** not indemnified by the **Company** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period**.

1.2. Company reimbursement

The **Insurer** will reimburse or pay on behalf of the **Company** any **Loss** which the **Company** has paid, or agreed to pay, as indemnification of an **Insured Person** resulting from a **Claim** first made against such **Insured Person** during the **Policy Period**.

1.3. Corporate legal liability

The **Insurer** will pay the **Company** for any **Loss** resulting from any **Claim** first made against the **Company** during the **Policy Period**.

2. Automatic Extensions

2.1. Regulatory extensions

a. Dawn Raid Costs

The **Insurer** will pay **Dawn Raid Costs** of the **Company**.

b. Regulatory Costs

The **Insurer** will pay **Regulatory Costs** of an **Insured Person**.

c. Internal Investigation Costs

The **Insurer** will pay **Internal Investigation Costs** of an **Insured Person**.

d. Health and Safety Costs

The **Insurer** will pay **Health and Safety Costs** of an **Insured**.

2.2. Insured persons extensions

The **Insurer** will pay:

- a. Access to Policy Costs;
- b. Circumstance Investigative Costs;
- c. Court Attendance Costs;
- d. Deprivation of Assets Costs;
- e. Environmental Liability Costs;
- f. Extradition Costs;
- g. Freezing of Assets and Disqualification Costs;
- h. Insolvency Hearing Costs;
- i. Mitigation Costs;
- j. Reputation Costs;

of an **Insured Person**.

2.3. Company extensions

The **Insurer** will pay:

- a. Crisis Response Costs

of the **Company**.

2.4. Continuous Cover

This policy extends cover for the **Loss** resulting from any **Claim** arising out of, based upon or attributable to a **Circumstance** which:

- a. could have been, but was not, notified by the **Insured** under any **Prior Policy**; and
- b. is first notified to the **Insurer** during the **Policy Period**.

Provided that for this cover to apply:

- a. the failure by the **Insured** to notify such **Circumstance** under such **Prior Policy** was not fraudulent; and
- b. the **Insurer** has the discretion to apply either the conditions or the terms and conditions of such **Prior Policy** in effect when the **Circumstance** first arose; and



- c. the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Insurer** as a result of the **Insured's** failure to notify such **Circumstance** under such **Prior Policy**; and
- d. the resulting **Claim** arises out of a **Wrongful Act**.

3. Exclusions

The **Insurer** shall not be liable to make any payment under this **Policy** for that part of any **Loss**:

APPLICABLE TO ALL INSURING CLAUSES AND AUTOMATIC EXTENSIONS.

3.1. Bodily injury or property damage

resulting from any **Claim** for actual or alleged bodily injury, sickness, disease or death of any person, or any damage to, destruction, impairment or loss of use of any tangible property.

This exclusion will not apply to:

- a. that part of any **Claim** against an **Insured Person** for mental anguish or emotional distress; or
- b. **Health and Safety Costs**.

3.2. Pollution

arising out of, based upon or attributable to:

- a. the actual alleged or threatened presence, dispersal, release or escape of **Pollutants**; or
- b. the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralising **Pollutants**, whether or not any of the foregoing are or should be performed by the **Insured** or by others.

This exclusion will not apply to:

- a. **Environmental Liability Costs**;
- b. any **Claims** brought by a security holder when such **Claim** is brought and maintained by the security holder acting independently of, and without solicitation, assistance, participation or intervention of an **Insured Person**.

3.3. Prior Claims, Insured Events and Circumstances

arising out of, based upon or attributable to:

- a. any **Claim, Insured Event, Circumstance** or **Wrongful Act** of which notice has been given under any policy in relation to which this policy is a renewal or replacement or any matter which taken together with such **Claim, Insured Event, Circumstance** or **Wrongful Act** would constitute a **Single Event**; or
- b. any prior or pending litigation, arbitration, administrative or regulatory proceeding which was brought against an **Insured** prior to the **Pending and Prior Litigation Date**.

This exclusion will not apply to facts or **Circumstances** which have been notified to the **Insurer** after the **Continuity Date** but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer**.

3.4. Conduct

brought about or contributed to by any:

- a. deliberately criminal or deliberately dishonest act or omission of any **Insured**; or
- b. profit or advantage gained by any **Insured** to which such **Insured** is not legally entitled; or
- c. any fraudulent act or omission; or
- d. any intentional, reckless or wilful acts or omissions;

as established by a final and non-appealable adjudication in the underlying proceeding, or formal written admission by such **Insured**.

3.5. Offering of securities

arising out of, based upon or attributable to any public or private offering of securities including the public or private solicitation, sale, distribution or issuance of such securities, whether or not a disclosure document has been issued, unless the **Insurer** grants its prior written consent to extend cover for such disclosure document.

3.6. U.S.A Claims or acts

arising out of any **Claim** which is brought or maintained in the United States of America or any **Wrongful Act** or **Loss** occurring in the United States of America.

3.7. Insolvency

arising out of, based upon or attributable to:

- a. the **Company** seeking protection under any bankruptcy laws or regulations, or any plan of reorganisation or liquidation (voluntary or otherwise), scheme of arrangement (voluntary or otherwise), or form of composition with third party creditors;
- b. the financial failure, liquidation, bankruptcy, insolvency, receivership or administration of a **Company**.

Provided that this exclusion will not apply to any otherwise covered **Personally Liable Tax Amounts** or **Insolvency Hearing Costs**.



3.8. Major shareholder

arising out of, based upon or attributable to any **Claim** brought or maintained by or on behalf of a shareholder:

- a. who owns or controls (directly, indirectly or beneficially) 25% or more of the issued and outstanding voting share capital of the **Company**, and
- b. who has **Board Representation** on the **Company** at the time of **Wrongful Act**.

3.9. Contamination damage and nuclear

arising out of, based upon or attributable to, directly or indirectly, **Loss**, damage or destruction:

- a. arising out of, based upon or attributable to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores, organic pathogens, organic chemicals, microorganisms or mycotoxins of any kind; or
- b. arising out of, based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste as a consequence of the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- c. arising out of, based upon or attributable to any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d. arising out of, based upon or attributable to the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e. arising out of, based upon or attributable to any chemical, biological, bio-chemical, or electromagnetic weapon.

3.10. War and terrorism

- a. arising out of, based upon or attributable to, directly or indirectly, war, invasion, act of foreign enemy, hostile operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot or civil commotion amounting to a popular uprising, military or takeover of power or martial law;
- b. arising out of, based upon or attributable to, directly or indirectly, terrorism.

3.11. Asbestos

arising directly or indirectly out of, based upon or attributable to:

- a. the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos; or
- b. any direction, request or effort to:
 - i test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos; or
 - ii respond to or assess the effects of asbestos.

For the purpose of determining the applicability of these exclusions, the knowledge or act, error or omission of any **Insured Person** will not be imputed to any other **Insured Person**. The knowledge of each **Responsible Person** will be imputed to all companies.

APPLICABLE TO CORPORATE LEGAL LIABILITY INSURING CLAUSE 1.3 ONLY

3.12. Competition and restraint of trade

arising out of, based upon, or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

3.13. Professional services

arising out of, based upon or attributable to the performance of or failure to perform professional services.

3.14. Intellectual property and data protection rights

arising out of, based upon or attributable to any actual or alleged infringement, misappropriation or violation of any intellectual property rights or breach of any data protection legislation.

3.15. Superannuation scheme

resulting from any **Claim** for, or **Insured Event** arising out of any trust fund, superannuation scheme, profit sharing scheme or **Employee** benefit scheme of any **Company** or any **Outside Entity**.

3.16. Insured vs Insured

arising out of any **Claim** brought by, on behalf of, or at the direction of the **Company**.

3.17. Employment practices

arising out of, based upon or attributable to any **Employment Practices Wrongful Act**.

3.18. Contractual liability

arising out of, based upon or attributable to any breach of contract or agreement, including any guarantee or warranties, except to the extent that the **Company** would have been liable in the absence of such contract or agreement.

This exclusion will not apply to **Defence Costs** and coverage shall be sub-limited to the amount specified in the **Schedule**.



4. Claims Conditions

4.1. Notification

a. Claims and Insured Events

The **Insured** must give notice to the **Insurer** of any:

- i **Claim** made against the **Insured** during the **Policy Period**; or
- ii **Insured Event** occurring during the **Policy Period**;

The **Insured** must also give notice to the **Insurer** of any intention on the part of the **Insured** to incur **Mitigation Costs** prior to such costs being incurred. Any **Mitigation Costs** incurred without first notifying the **Insurer** and obtaining consent to such costs being incurred will not be covered under this policy.

In the event that the **Insured** is prevented from notifying any **Claim**, or **Insured Event** to the **Insurer** (after the **Insured** has sought consent to do so) due to any legal or regulatory prohibition restricting them from doing so, the **Insured** must provide full details of the **Claim**, or **Insured Event** to the **Insurer** as soon as such restriction is lifted.

If the **Insured** does not give notice to the **Insurer** in compliance with this provision, the **Insurer** will have no liability under this policy in respect of that **Claim**, **Insured Event**, or **Mitigation Costs**.

b. Related matters

A **Single Event** will be treated by the **Insurer** as having been notified when the first of such **Claims**, or **Insured Events** was notified, irrespective of whether or not the **Insurer** has formally accepted the notice.

c. Circumstances

The **Insured** may, during the **Policy Period**, notify the **Insurer** of any fact or **Circumstances** which in the reasonable opinion of the **Responsible Person** may give rise to a **Claim** or an **Insured Event**.

Any notice must include the reasons why the **Responsible Person** reasonably anticipates that the fact or **Circumstances** may give rise to a **Claim** or an **Insured Event** and, where available, full particulars of the dates, acts and persons involved.

Any **Claim** which is made or **Insured Event** which occurs after the end of the **Policy Period** and which arises from a **Circumstance** notified in accordance with this clause will be deemed to have been made or have occurred at the same time such **Circumstance** was notified.

d. Address for notifications

All notices must be sent either by email or to the address specified on the Schedule.

4.2. Defence and settlement

a. Duties

The **Insured** has the right and duty to defend and contest any **Claim** made against them, or any **Insured Event** commenced against them, and will take all reasonable steps to prevent or minimise any **Loss**.

The **Insurer** will be entitled to participate fully in the conduct of the defence, including settlement negotiations, contribution or indemnification proceedings, where it is reasonably likely to involve the **Insurer** making any payment under this policy.

b. Consent to Policy Costs

The **Insurer** will not be obliged to pay any **Policy Costs** provided under this policy unless the **Insurer** has provided prior written consent to such **Policy Costs** being incurred (except where expressly stated in the policy that prior consent is not first required).

If the **Insurer's** prior written consent cannot reasonably be obtained before **Policy Costs** (not including **Mitigation Costs**) are incurred, then the **Insurer** will give retrospective approval for such reasonable **Policy Costs** necessarily incurred.

c. Advancements

The **Insurer** will, upon the written request of an **Insured**, advance **Defence Costs** prior to coverage being confirmed.

d. Consent to settlements

If an **Insured** admits liability or compromises or settles any **Claim** or **Insured Event** without the **Insurer's** prior written consent, this policy will not provide cover to that **Insured** in connection with that admission, **Claim** or **Insured Event**.

The **Insured** will not be required to receive the **Insurer's** consent prior to making any self-report or formal written representation to a regulatory authority, provided that, as soon as legally permitted, the **Insured** will seek the consent of the **Insurer** in accordance with this clause. The **Insurer** will not consider such self-report or formal written representation as an admission of liability for the purposes of this clause.

e. Uninsured Loss

The **Insured** will reimburse the **Insurer** for any payments which are ultimately determined not to be covered under this policy.

4.3. Allocation

Where a **Claim**, or **Insured Event** involves both parties covered and not covered and/or matters covered and not covered by this policy, the **Insurer's** liability is limited to the proportion of the **Claim**, **Insured Event**, or **Loss** which represents a fair and proper allocation between the **Insured** and the **Insurer**, and/or matters covered and not covered by this policy, taking into account the relative legal and financial exposures attributable to the parties and/or matters covered and not covered by this policy.

In the circumstances where the **Insured** and **Insurer** cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to a binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.



4.4. Cooperation

The **Insured** will give all information and assistance to the **Insurer** as it may reasonably require to enable it to investigate any matter notified under this policy and cooperate with the **Insurer** in responding to any **Claim**, or **Insured Event**.

Except where expressly provided for in this policy, these steps will not be paid for by the **Insurer**. The failure of any **Insured Person** to give the **Insurer** the information and assistance which it may reasonably require will not impair the rights of any other **Insured Person** under this policy.

4.5. Other insurance or indemnification

This policy will only pay **Loss** that is in excess of any amount recoverable from a more specific directors' and officers'/management liability, pension trustee/ fiduciary liability, general liability, employer's liability or property/crime insurance available to the **Insured** issued by a different **Insurer**. As excess insurance, this policy will not apply or contribute to the payment of any **Loss** until the amounts of that other insurance have been exhausted. This clause does not apply to any policy issued by the **Insurer**.

All coverage under this policy for **Loss** arising from an **Insured Person** whilst acting in their capacity as an **Outside Director**, will be specifically excess of and will not contribute with, any other insurance or indemnification available to such **Insured Person** from the **Outside Entity** or its insurers by reason of their service as such.

4.6. Subrogation and recoveries

Following a payment under this policy, the **Insurer** will be subrogated to all rights and remedies available to the **Insured** in connection with that payment therefore the **Insurer** has the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in the name of the **Insured**.

Whether before or after payment under this policy, the **Insured** will take all steps necessary, or required by the **Insurer**, to preserve the rights and remedies which the **Insured** may have to recover its **Loss**.

The **Insured** will provide to the **Insurer** any assistance the **Insurer** may require to secure the rights and remedies set out above. The **Insurer** shall be entitled to take control of all steps taken to recover any **Loss**.

Any amounts recovered will be applied in the following order:

- a. to reimburse costs incurred in bringing proceedings against the third party;
- b. then to the **Insured** for the amount of any **Loss** which exceeds the **Limit of Liability**;
- c. then to the **Insurer** up to the amount of the **Loss** paid by the **Insurer** and the **Limit of Liability** will be reinstated for such amounts; and
- d. then to the **Insured** to reimburse the **Retention**.

The **Insurer** agrees not to exercise its rights of recovery against any **Insured Person** unless the payments made by the **Insurer** under this policy are brought about or contributed to by the deliberately dishonest act or omission of that **Insured Person**.

4.7. Priority of payments

If **Loss** is payable under more than one Insuring Clause or Coverage Extension, then the **Insurer** will pay such **Loss** as follows:

- a. first, the **Insurer** will pay the **Loss** of the **Insured Person** where the **Company** has not indemnified the **Insured Person** for such **Loss**;
- b. second, the **Insurer** will pay the **Loss** of the **Insured Person** where the **Company** has indemnified the **Insured Person** for such **Loss**; and
- c. third, the **Insurer** will make such other payments which the **Insurer** may be liable to make to the **Company**.

5. General Conditions

5.1. Limit of liability

The **Limit of Liability** is the maximum amount payable by the **Insurer** under this Directors' and Officer's and Corporate Legal Liability policy in respect of all **Insureds**, Insuring Clauses and Automatic Extensions.

However, the **Limit of Liability** will be automatically reinstated, but only up to AUD500,000, in the event of erosion or exhaustion by payment of **Loss** to the extent of such erosion or exhaustion. Such reinstated **Limit of Liability** will only apply to the coverage afforded under Insuring Clause 1.1 and only after the **Limit of Liability** of all insurance policies sitting excess of this policy have been exhausted.

The **Insurer** will not be liable for more than the **Limit of Liability** in respect of all **Loss** arising from a **Single Event** and the **Limit of Liability** plus AUD500,000 in the aggregate in respect of all **Loss** payable under this policy in the event of a reinstatement.

Any **Loss** paid by the **Insurer** under this policy will reduce the **Limit of Liability**.

Where any sub-limit is specified in the policy or schedule, the **Insurer** will have no liability in excess of that sub-limit.

Any sub-limit will be part of and not in addition to the **Limit of Liability**.

5.2. Combined Policy Aggregate Limit of Liability

The **Combined Policy Aggregate Limit of Liability** listed in the Schedule is the combined total limit of liability for all loss payable under this Directors' and Officer's and Corporate Legal Liability policy or any Employment Practices Liability policy, Statutory Liability or Commercial Crime policy provided by the **Insurer**. The Schedule will indicate which policies have been purchased.

Each individual policy has its own limit of liability which is part of and not in addition to the **Combined Policy Aggregate Limit of Liability** and is a separate aggregate amount. Each individual policy's limit of liability operates as a sub-limit of the **Combined Policy Aggregate Limit of Liability**. Once the limit of liability for each individual policy is exhausted then the **Insurer** will have no liability in excess of that limit of liability for each individual policy even if the **Combined Policy Aggregate Limit of Liability's limit** has not been exhausted.

Once the **Combined Policy Aggregate Limit of Liability's** limit has been exhausted then the **Insurer** will have no liability in excess of the **Combined Policy Aggregate Limit of Liability** even if the limit of liability has not been exhausted for any individual policy purchased including this Directors' and Officer's and Corporate Legal Liability policy.



5.3. Retention

The **Retention** will apply to:

- a. all **Loss** to which indemnification of an **Insured Person** by the **Company** or an **Outside Entity** is legally required or permitted, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** or such **Outside Entity** solely by reason of its financial insolvency, in which case no **Retention** will apply.
- b. all other **Loss** incurred by the **Company**.

The **Insurer** will be liable only for that part of any covered **Loss** which exceeds the **Retention**.

With respect to the **Company's** and any **Outside Entity's** indemnification of **Insured Persons**, the certificate of incorporation, charter, by-laws, articles of association, or other organisational documents of the **Policyholder**, each **Subsidiary** and each **Outside Entity**, will be deemed to permit indemnification of the **Insured Persons** to the fullest extent allowable by law.

In the event a **Company** or an **Outside Entity** refuses in writing to indemnify the **Insured Persons** for **Policy Costs** or fails to indemnify the **Insured Persons** for **Policy Costs** within 60 days of a request for indemnification, then the **Insurer** will advance such **Policy Costs**, provided that the **Insurer** will be entitled to seek recovery from the **Company** for such **Policy Costs** up to the amount of the **Retention**. The **Insurer** will be entitled to offset such **Policy Costs** against any sums due from the **Insurer** to the **Company**.

Only one **Retention**, being the largest, will be applied to the total amount of **Loss** arising from a **Single Event**.

In respect of **Mitigation Costs**, a single **Retention** will apply to all anticipated **Claims** arising out of, based upon or attributable to the same originating cause, source or event.

5.4. Change of control / acquisitions

In the event of a **Change of Control** of a **Company**, no cover under this policy will apply for any:

- a. **Claim** against that **Company** or their **Insured Persons**, which arises from a **Wrongful Act**; or
- b. **Insured Event** concerning that **Company** or their **Insured Persons**, which arises out of any conduct, **Circumstance** or matter,

that occurred after such **Change of Control**. The **Policyholder** will, as soon as practicable, give the **Insurer** written notice of any **Change of Control** which takes place in respect of the **Policyholder**.

Upon receipt by the **Insurer** of such written notice, the **Insurer** may agree at their sole discretion to the continuation of cover for:

- i. **Claims** against the **Policyholder**, their subsidiaries and their **Insured Persons** arising from a **Wrongful Act**; or
- ii. **Insured Events** concerning the **Policyholder**, their subsidiaries and their **Insured Persons** which arises out of any conduct, **Circumstance** or matter,

that occurred after such **Change of Control**, on such terms and conditions and for such additional premium as the **Insurer** requires.

In the event of an acquisition of a **Subsidiary**, no cover under this policy will apply for any:

- a. **Claim** against that **Subsidiary** or their **Insured Persons**, which arises from a **Wrongful Act**; or
- b. **Insured Event** concerning that **Subsidiary** or their **Insured Persons**, which arises out of any conduct, **Circumstance** or matter, that first commenced before such acquisition.

5.5. Discovery Period

If this policy is not renewed or replaced, the **Insured** will be entitled:

- a. to an automatic **Discovery Period** of 60 days;
- b. to purchase an optional **Discovery Period** for a longer period as specified in the Schedule, provided that written notice is given to the **Insurer** by the **Policyholder** within 30 days after the end of the **Policy Period** and any additional premium specified by the **Insurer** is paid within 45 days of the end of the **Policy Period**; and
- c. to an unlimited **Discovery Period** in the event such **Insured** is a **Retired Insured Person**.

The automatic **Discovery Period** is part of and not in addition to any optional **Discovery Period** purchased by the **Insured**.

The **Discovery Period** is non-cancellable and the premium for the optional **Discovery Period** is deemed fully earned at the inception date of the optional **Discovery Period**.

In the event of a **Change of Control** of the **Policyholder**, the **Policyholder** is entitled to purchase a 72 month **Discovery Period** on such terms and conditions and for such additional premium as the **Insurer** requires.

5.6. Cancellation

The **Policyholder** may cancel this policy at any time giving the **Insurer** 30 days' written notice. If the **Insured** has notified any **Claims** or **Insured Events** or the **Insurer** has made any payments of **Loss** under the policy prior to such cancellation then the premium for this policy will be deemed fully earned and there will be no refund of any premium due.

If the **Insured** has not notified any **Claims** or **Insured Events** and the **Insurer** has not made any payments of **Loss** then the **Insurer** will make a pro-rata refund of premium.

The **Insurer** may cancel this policy in accordance with the Insurance Contracts Act (cth).

5.7. Authorisation and notices

The **Policyholder** will act on behalf of all **Insureds** in connection with all matters relevant to this policy unless the **Policyholder** is insolvent in which event the remaining entities will agree with the **Insurer** as to which one of them will act on behalf of all **Insureds**.

Subject to the other provisions of this policy, this clause does not preclude an **Insured Person** from notifying the **Insurer** of a **Claim**, **Insured Event** or **Circumstance** in accordance with the notification provision in this policy.



5.8. Third parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **Insured**.

5.9. Assignment

Neither this policy nor any right under it may be assigned without the prior written consent of the **Insurer**.

5.10. Governing law

This policy will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

Any dispute relating to the policy shall be submitted to the exclusive jurisdiction of an Australian Court within the State or Territory in which the policy was issued.

Any summons, notice or process to be served upon the **Insurer** may be served upon the underwriters:

Allied World Assurance Company (Australia Branch)
Level 21, 264 George Street, Australia Square,
Sydney NSW 2000, Australia

and,

Lloyd's Underwriters'
General Representative in Australia
Post: PO Box R1745, Royal Exchange NSW 1225

who have authority to accept service and to appear on the behalf of the **Insurer**.

5.11. Jurisdictional limits

This policy will only apply to **Claims** brought within the jurisdictional limits stated in the Schedule.

5.12. Insurer's consent

Where the **Insured** is required under this policy to seek the consent of the **Insurer**, the **Insurer** will not unreasonably withhold, delay or deny such consent.

5.13. Sanction limitation

The **Insurer** will not be liable to provide any cover, benefit or pay any **Claim** under this policy to the extent that the provision of such cover, benefit or payment of such **Claim** would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Australia.

5.14. Several liability

The liability of the **Insurer** under this policy is several and not joint with other insurers who may be a party to this policy. Insurers are liable only for the proportion of liability it has underwritten. The **Insurer** and any insurers are not jointly liable for the proportion of liability underwritten by any other insurer, nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this policy.

The proportion of liability under this policy underwritten by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

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

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

6. Definitions

The following definitions are applicable to all sections of this policy:

- 6.1. Access to Policy Costs** means reasonable fees, costs and expenses necessarily incurred by any of the **Insured Persons** solely and exclusively to investigate and resist any challenge, by any other **Insured Person**, the **Company** or any third party, to their right to cover under this policy.
- 6.2. Bail Bond Costs** means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for bail required by a court.
- 6.3. Change of Control** means any one of the following events:
- the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
 - any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**;
 - the appointment of a receiver, liquidator, administrator or other insolvency practitioner in respect of a **Company**, but only in relation to that **Company**;
 - an entity ceases to be a **Subsidiary**, or becomes controlled by another entity by virtue of any law; or
 - the **Policyholder** undertakes a public offering of or listing of equity securities.



- 6.4. Circumstance** means an incident, occurrence, fact, matter, act, error or omission which may give rise to a **Claim** against the Insured.
- 6.5. Circumstance Investigative Costs** means reasonable fees, costs and expenses necessarily incurred by any of the **Insured Persons** solely and exclusively to investigate any fact or **Circumstance** notified to the **Insurer** during the **Policy Period** and to plan the defence of any subsequent potential **Claim**, but only when and to the extent it is established that after a **Claim** is made such amounts avoid **Defence Costs** being incurred specifically in response to such **Claim** and is covered by this policy. An **Insured** may approach the **Insurer** prior to a **Claim** being made for consent that such fees, costs and expenses will be considered reasonable in the event a **Claim** is subsequently made.
- 6.6. Claim** means:
- a. a written demand for damages, compensation or non-monetary relief;
 - b. a civil proceeding for damages, compensation or non-monetary relief;
 - c. a demand for mediation, arbitration or other form of alternative dispute resolution for damages, compensation or non-monetary relief;
 - d. a criminal proceeding;
 - e. in respect of an Insured Person only, an administrative or regulatory proceeding;
- arising out of a **Wrongful Act**; or
- f. a **Health and Safety Claim**.
- Claim** includes a written request to extend the operation of or waive any statute of limitations or contractual time-bar which may be applicable to a **Claim** as defined above.
- 6.7. Combined Policy Aggregate Limit of Liability** is the amount specified in the Schedule as applicable in the aggregate to any individual policy, including this policy, provided by the **Insurer** to the **Insured**.
- 6.8. Company** means the **Policyholder** and any **Subsidiary**.
- 6.9. Company Wrongful Act** means any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Company**.
- 6.10. Continuity Date** means the date specified in the Schedule.
- 6.11. Court Attendance Costs** includes up to AUD500 per day for each day up to a maximum of 14 days on which any **Insured Person** has been required to and has attended court as a witness in connection with a **Claim** notified under and covered by this policy. No **Retention** will apply. The AUD 500 is the total amount payable by the **Insurer** regardless of the number of **Insured Persons** attending court in connection with a **Claim** notified and covered by this policy.
- 6.12. Crisis Response Costs** means the reasonable fees, costs and expenses necessarily incurred by the **Company** in appointing a public relations firm or a crisis management firm to mitigate the adverse or potentially adverse effect on the **Company's** reputation due to a **Crisis Event**.
- 6.13. Crisis Event** means:
- a. a **Claim** first made against the **Company** during the **Policy Period**;
 - b. the permanent disability, death, discharge or resignation (other than a planned retirement) of a **Responsible Person** during the **Policy Period**.
- 6.14. Dawn Raid** means:
- a. a raid or on-site visit to the **Company** by any **Regulatory Authority** that involves the production, review, copying or confiscation of files or interviews of any **Insured Persons**;
 - b. a public announcement relating to an event in sub-paragraph (a) above.
- A **Dawn Raid** does not include routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **Insured**.
- 6.15. Dawn Raid Costs** means reasonable fees, costs and expenses necessarily incurred by the **Company** directly in connection with preparing for, cooperating with or attending interviews in respect of or responding to a **Dawn Raid** first commenced during the **Policy Period**.
- 6.16. Defence Costs** means the reasonable fees, costs, expenses, **Expert Costs** and **Bail Bond Costs** necessarily incurred solely and exclusively by or on behalf of the **Insured** in connection with the investigation, defence, settlement or appeal of a **Claim**.
- 6.17. Deprivation of Assets Costs** means the payment directly to the provider of one of the following services in the event of an order confiscating, controlling, suspending or freezing the rights of ownership of real property or personal assets of an **Insured Person** or imposing a charge over real property or personal assets of an **Insured Person** during the **Policy Period**:
- a. schooling;
 - b. housing;
 - c. utilities; or
 - d. personal insurances.
- Such expenses will only be available up to the sub-limit in the Schedule and only after the exhaustion of any personal allowance directed by the court to meet such payments.
- 6.18. Deportation or Freezing Order** means an interim or interlocutory order first issued during the **Policy Period**:
- a. confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an **Insured Person**; or
 - b. imposing a charge over real property or personal assets of an **Insured Person**; or
 - c. imposing a restriction of an **Insured Person's** liberty; or
 - d. for the deportation of an **Insured Person** following revocation of an otherwise proper, current and valid immigration status for any reason other than the **Insured Person's** finally adjudicated conviction for a crime.



- 6.19. Discovery Period** means the period of time following the end of the **Policy Period** during which notice may be given to the **Insurer** of:
- a. any **Claim** arising out of any **Wrongful Act** or **Company Wrongful Act** committed before the end of the **Policy Period**; or
 - b. any **Insured Event** arising out of any conduct undertaken before the end of the **Policy Period**.
- 6.20. Disqualification Order** means an order first issued during the **Policy Period** disqualifying an **Insured Person** from holding office as a company director or officer.
- 6.21. Employee** means any natural person who was or is:
- a. under a contract of employment with;
 - b. working under an apprenticeship with;
 - c. hired or seconded to; or
 - d. working under the control and supervision of, the **Company**.
- 6.22. Employment Practices Wrongful Act** means any employment related actual or alleged tortious act or omission, breach of statutory provision or breach of civil or common law relating to an **Employee**.
- 6.23. Environmental Liability Costs** means **Defence Costs** incurred by any **Insured Person** in connection with an **Environmental Claim**.
- 6.24. Environmental Claim** means a **Claim** first made against an **Insured Person** during the **Policy Period** and which arises out of a discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of **Pollutants**.
- 6.25. Expert Costs** means the reasonable fees, costs and expenses of an expert retained through defence counsel in order to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence.
- 6.26. Extradition Costs** means the reasonable fees, costs and expenses necessarily incurred by an **Insured Person** in connection with an **Extradition Proceeding**.
- 6.27. Extradition Proceeding** means any proceeding against an **Insured Person** first commenced during the **Policy Period** to remove that **Insured Person** to another territory against their will, and includes any appeal to such proceeding.
- 6.28. Freezing of Assets and Disqualification Costs** means reasonable legal or professional fees, costs and expenses necessarily incurred by an **Insured Person** to bring legal proceedings to obtain the discharge or revocation of a **Disqualification Order** or **Deportation or Freezing Order**.
- 6.29. Health and Safety Claim** means any administrative or regulatory proceeding first made against an **Insured** during the **Policy Period** alleging a breach of health and safety legislation or any legislation relating to involuntary manslaughter or corporate manslaughter.
- 6.30. Health and Safety Costs** means the **Defence Costs** of an **Insured** incurred in respect of a **Health and Safety Claim**.
- 6.31. Insolvency Hearing Costs** means reasonable fees, costs and expenses necessarily incurred by an **Insured Person** to retain legal advisors for the purposes of representation at any **Insolvency Hearing**.
- 6.32. Insolvency Hearing** means any formal or official hearing of insolvency or bankruptcy proceedings first commenced during the **Policy Period** by an insolvency practitioner in connection with an investigation or inquiry into the affairs of a **Company** or an **Insured Person**.
- 6.33. Insured** means the **Insured Persons** and the **Company**.
- 6.34. Insured Event** means **Access to Policy Costs**; **Court Attendance Costs**; **Crisis Response Costs**; a **Dawn Raid**; a **Deportation or Freezing Order**; a **Disqualification Order**; an **Extradition Proceeding**; an **Insolvency Hearing**; an **Internal Investigation**; a **Regulatory Event**; and a **Reputational Damage Event**.
- 6.35. Insured Person** means any natural person who was, is, or during the **Policy Period** becomes:
- a. a director or officer of the **Company**;
 - b. a **Data Protection Officer**;
 - c. an **Outside Director**;
 - d. an **Employee** of the **Company**:
 - i whilst acting in a managerial or supervisory capacity;
 - ii whilst performing an advisory role on any remuneration or audit committee of the **Company**;
 - iii when named as a co-defendant in a **Claim** or **Insured Event** which also names a director or officer of the **Company**;
 - iv with respect to a **Claim** alleging an **Employment Practices Wrongful Act**;
 - v admitted to practice law and employed to provide legal advice to the **Company** and only when named as a co-defendant in a **Claim** or **Insured Event** which also names a director or officer of the **Company**.
 - e. a de facto or shadow director while acting in a capacity as a director or officer of the **Company**;
 - f. a prospective director named as such in any listing particulars or prospectus issued by the **Company**;
 - g. a duly named representative of a legal entity which is a corporate director of the **Company**;

but only when and to the extent acting for and on behalf of the **Company** in such capacity.

Insured Person includes the estate, heirs, legal representatives or assigns of an **Insured Person** in the event of their death, incapacity or bankruptcy or the lawful spouse, civil or domestic partner of an **Insured Person** solely in their capacity as such.

Insured Person does not include any externally appointed receiver, liquidator, administrator or other insolvency practitioner appointed under Part 5 of the Corporations Act 2001 (Cth) or any other similar law anywhere in the world or pursuant to the provisions of any contract or other instrument.



- 6.36. Insurer** means Delta Insurance Australia Pty Ltd writing on behalf of the Underwriters named in the policy schedule.
- 6.37. Internal Investigation** means a request by or on behalf of the **Company** during the **Policy Period** for an **Insured Person** to appear for an interview or meeting or to provide a sworn testimony or to produce documents in connection with an investigation by the **Company** following a notification to a **Regulatory Authority** by a **Company** or an **Insured Person** or whistleblower informing a **Regulatory Authority** of an actual or suspected material breach of an **Insured Person's** fiduciary or regulatory duties. An **Internal Investigation** does not include routine regulatory or internal supervision, inspection, review, examination or audit, or any request for mandatory information in respect of a regulated entity conducted in a **Company's** or **Regulatory Authority's** normal review or compliance process.
- 6.38. Internal Investigation Costs** means reasonable fees, costs and expenses necessarily incurred by an **Insured Person** for legal representation in connection with an **Internal Investigation**.
- 6.39. Limit of Liability** means the amount specified in the Schedule applicable to the Directors' and Officers' and Corporate Legal Liability policy which is an aggregate limit.
- 6.40. Loss** means:
- a. **Policy Costs** to the extent afforded by the applicable Coverage Extension;
 - b. any amount that the **Insured** is legally liable to pay as damages, judgments, settlements, pre and post judgment interest, punitive or exemplary damages, and the multiplied portion of any damage award where insurable by law; and
- Loss** does not include:
- a. fines and penalties, except:
 - i any civil, strict or administrative fines and penalties awarded against an **Insured Person** which are insurable in the jurisdiction in which the **Claim** giving rise to the fine or penalty is determined. The **Insurer** is not liable to indemnify any fine or penalty which the **Insurer** is legally prohibited from insuring under any Australian or New Zealand law; or
 - ii punitive or exemplary damages;
 - b. employment-related compensation, wages or benefits, or costs or overheads of the **Company**;
 - c. taxes, except **Personally Liable Corporate Tax Amounts**; or
 - d. amounts which are uninsurable.
- If the applicable law of the jurisdiction in which fines or penalties or damages were awarded permits more favourable insurability of such fines, penalties or damages than the governing law of this policy, then the insurability of such fines, penalties or damages will be determined in accordance with that relevant jurisdiction and, to this extent, will not be considered to be uninsurable loss under this policy.
- 6.41. Management Control** means:
- a. controls the composition of the board of directors;
 - b. controls more than half of the shareholder voting power; or
 - c. holds more than half of the issued share capital.
- 6.42. Mitigation Costs** means any reasonable payments incurred by the **Insured** during the **Policy Period** in taking action to mitigate the financial consequences of a **Wrongful Act** which the **Insured** establishes to the **Insurer's** satisfaction would otherwise have reasonably been expected to give rise to a **Claim** for which the resulting **Loss** would have been covered by the policy. **Mitigation Costs** do not include payments incurred after such **Claim** is made.
- Mitigation Costs** does not include payments incurred without the **Insured** first obtaining the **Insurer's** consent.
- 6.43. Outside Director** means any natural person who, at the specific request of or with the consent of the **Company**, is serving as a director, officer, shadow director, trustee (other than a pension trustee), regent or governor of an **Outside Entity**.
- 6.44. Outside Entity** means any entity other than:
- a. a **Company**; or
 - b. an entity incorporated or domiciled in the United States of America;
 - c. an entity which is a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity; or
 - d. an entity with its securities listed on any securities exchange.
- 6.45. Pending and Prior Litigation Date** means the date specified in the Schedule.
- 6.46. Personally Liable Corporate Tax Amounts** means those amounts of unpaid corporate taxes that an **Insured Person** is found to be personally liable to pay following the appointment of a receiver, liquidator, administrator or other insolvency practitioner to a **Company**.
- 6.47. Policy Costs** means **Access to Policy Costs, Circumstance Investigative Costs, Dawn Raid costs, Defence Costs, Environmental Liability Costs, Extradition Costs, Freezing of Assets and Disqualification Costs, Health and Safety Costs, Insolvency Hearing Costs, Internal Investigation Costs, Mitigation Costs, Regulatory costs, and Reputation Costs**.
- Policy Costs** will not include the remuneration of any **Insured Person**, the cost of their time or costs or overheads of the **Company**.
- 6.48. Policyholder** means the entity named in the Schedule.
- 6.49. Policy Period** means the period specified in the Schedule.
- 6.50. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, mould, spores, fungus, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.



- 6.51. Prior Policy** means any Directors' and Officers and Corporate Legal Liability policy issued to the **Insured** by the **Insurer** only, immediately prior to the commencement of this **Policy Period**.
- 6.52. Regulatory Authority** means any regulator, government, government body, judicial or parliamentary body, governmental or administrative agency, any self-regulatory body recognised in that capacity under applicable law or official trade body.
- 6.53. Regulatory Costs** means reasonable fees, costs and expenses necessarily incurred by an **Insured** directly in connection with preparing for, cooperating with or attending interviews in respect of or responding to a **Regulatory Event** first commenced during the **Policy Period**.
- 6.54. Regulatory Event** means:
- a. a request or requirement by a **Regulatory Authority** for an **Insured Person** to attend an interview, meeting or provide information;
 - b. any formal or official hearing, examination or investigation by a **regulatory authority**, once the **Insured Person**:
 - i. is requested or required to cooperate with or attend; or
 - ii. is identified in writing by that **Regulatory Authority** as a target of the formal or official hearing, examination or investigation.
- A **Regulatory Event** does not include routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **Insured**.
- 6.55. Reputation Costs** means the reasonable fees, costs and expenses necessarily incurred by the **Insured Person** in appointing a public relations firm or consultant, a crisis management firm, a law firm or tax advisor retained by the **Insured Person** directly to mitigate the adverse or potentially adverse effect on that **Insured Person's** reputation due to a **Reputational Damage Event**.
- 6.56. Reputational Damage Event** means:
- a. a **Claim** first made against an **Insured Person** during the **Policy Period**;
 - b. negative publicity posted on internet-based social media platforms or websites of which the **Insured Person** first becomes aware during the **Policy Period** and which could, in their reasonable opinion, give rise to a **Claim**.
- 6.57. Responsible Person** means any member of the Board of Directors, the Risk Manager, Insurance Manager, Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Compliance Officer, Head of Audit or General Counsel including any individual in a substantially similar position or with substantially similar responsibilities as those referenced, irrespective of the exact title of such individual, of the **Policyholder**.
- 6.58. Retention** means the applicable amount specified in the Schedule or as otherwise specified in the Policy.
- 6.59. Retired Insured Person** means any **Insured Person** who has ceased to act in their Insured capacity prior to expiry of the **Policy Period** for reasons other than:
- a. disqualification from holding office or from managing a **Company**;
 - b. a **Change of Control**; or
 - c. the insolvency of any **Company**,
- and does not subsequently resume their position.
- 6.60. Single Event** means all **Claims** and **Insured Events** arising out of, based upon or attributable to the same originating cause, source or event. The **Insurer** will deem all **Claims** and **Insured Events** that are attributable to, results from or is in connection with, or gives rise to the insolvency of the **Company** as the same originating cause, source or event.
- 6.61. Subsidiary** means any entity in which the **Policyholder** either directly or indirectly through one or more entities has or had **Management Control** on or before the inception date of this policy.
- Subsidiary** will include:
- a. any new entity which the **Company** incorporates during the **Policy Period** and which, at the time of incorporation, the **Company** has **Management Control** provided that such entity is not incorporated, domiciled, has equity securities, trades in or employees in the United States of America.
 - b. any entity that the **Company** acquires **Management Control** of during the **Policy Period** provided that at the time of obtaining that **Management Control**, the acquired entity is not incorporated, domiciled, has employees in or has equity securities issued or traded, in the United States of America.
- Subsidiary** does not include any fund, investment vehicle, managed investment scheme or trust.
- 6.62. Wrongful Act** means any act, error, omission, misstatement, misleading statement, neglect, **Employment Practices Wrongful Act** or breach of duty actually or allegedly committed, attempted or proposed to be committed by any **Insured Person**. In respect of Insuring Clause 1.3, **Wrongful Act** will only mean a **Company Wrongful Act**.





**Embrace
Change.**

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