



ML Plus+ Policy Wording

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ML PLUS+ POLICY WORDING

ABOUT THE INSURERS

The insurers of this product are Certain Underwriters at Lloyd's ("**Underwriters**", "**We**", "**Us**" or "**Our**"), of whose definitive numbers and the proportions underwritten by them, will be supplied on application. In consideration of the premium specified in the **Schedule**, the said underwriters are hereby bound, severally and not jointly, each for their own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained in this **Policy** or any endorsement.

ABOUT ARCH

Arch Underwriting at Lloyd's (Australia) Pty Ltd ABN 27 139 250 605 AFSL 42674 ("**AUALA**") has been authorised by **Us** to act on **Our** behalf to deal in and provide general advice and handle and settle **Claims** in relation to this insurance. AUALA is an Australian Financial Services Licensee authorised to deal in and provide general advice on general insurance products.

AUALA has a binding authority which means it can enter into, vary or cancel this insurance and handle and settle **Claims** without reference to **Us** provided it acts within the binding authority. When providing these services, AUALA acts for **Us** and does not act on **Your** behalf.

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

IMPORTANT NOTICES UNDER THE INSURANCE CONTRACTS ACT 1984

"Claims made and notified" general information

The information under this heading is provided for general information purposes only and does not:

- form part of the **Policy** wording
- impose any contractual obligations on any **Insured** or create contractual rights between **Us**.

Certain insuring clauses in this **Policy** wording operate on a "**Claims made and notified**" basis, which means that they:

- cover **Claims** made against the relevant **Insured** and notified to **Underwriters** in writing during the **Period of Insurance**.
- do not provide cover in relation to:
 - **Claims** made against an **Insured** after the expiry of the **Period of Insurance**, even though the event giving rise to the **Claim** may have occurred during the **Period of Insurance** (unless specified otherwise);
 - **Claims** made against an **Insured** notified or arising out of facts or **Circumstances** notified (or which ought reasonably to have been notified) under any previous **Policy**;
 - **Claims** made, threatened or intimated against an **Insured** prior to the commencement of the **Period of Insurance**;
 - facts or **Circumstances** of which an **Insured** first became aware prior to the **Period of Insurance**, and which they knew, or ought reasonably to have known, had the potential to give rise to a **Claim** under the contract;
 - **Claims** arising out of **Circumstances** noted on the **Proposal** for the current **Period of Insurance** or on any previous proposal form;
 - **Claims** arising from civil, administrative, criminal or regulatory proceeding, investigation, arbitration or adjudication that existed prior to, or was pending before, the commencement of the **Period of Insurance**.

If the **Insured** gives notice in writing to **Underwriters** of any facts that might give rise to a **Claim** against them as soon as reasonably practicable after they become aware of those facts, but before the expiry of the **Period of Insurance**, they may have rights under Section 40(3) of the *Insurance Contracts Act 1984* (Cth) ("the Act") to be indemnified in respect of any **Claim** subsequently made against them arising from those facts, notwithstanding that the **Claim** is made after the expiry of the **Period of Insurance**. Such rights arise under the Act only. The terms of the **Policy** and the effect of the **Policy** is that the **Insured** is not covered for **Claims** made against them after the expiry of the **Period of Insurance**, unless specified otherwise.

Duty of Disclosure

Before any person/s enter into a **Policy** with **Us**, they have a duty under the **Act** to tell **Underwriters** anything that they know, or could reasonably be expected to know, may affect **Our** decision whether to insure them and on what terms.

They have this duty until **We** agree to insure them.

They have the same duty before they renew, extend, vary or reinstate the contract.

What We do not need to know

A person does not need to tell **Underwriters** anything that:

- reduces the risk **We** insure **You** for; or
- is of common knowledge; or
- **We** know or should know as an insurer; or
- **We** waive **Your** duty to tell **Us** about.

What happens if the duty of disclosure is not complied with?

If a person does not tell **Us** anything they are required to, **We** may cancel the **Policy** or reduce the amount **We** will pay in respect of a **Claim** under the **Policy**, or both. If the failure to tell **Us** is fraudulent, **We** may refuse to pay a **Claim** and treat the **Policy** as if it never existed.

Retroactive liability

The **Policy** does not provide cover in relation to events that occur before the commencement of the contract unless retroactive liability cover is requested in the proposal form and **We** agree to extend cover accordingly.

Average provision and allocation of loss between the Insured and Underwriters

One of the **Policy** terms provides that if the **Insured** incur **Loss** covered by the contract with other loss that is not covered by the contract, or if a **Claim** is made against the **Insured** and it is impossible to identify whether the **Loss** or the **Claim** is attributable exclusively or primarily to a covered cause, then the **Insured** together with **Underwriters** will use our best efforts to agree a fair and proper allocation of the loss between **Underwriters** and the **Insured**. If **We** cannot agree, **We** may agree to submit the dispute to a Senior Counsel. Please refer to the **Policy** wording for full details.

The **Policy** may also provide that, where the amount required to dispose of a **Claim** exceeds the limit of the sum insured in the contract, **Underwriters** will be liable only for a part of the total costs and expenses which will be the same proportion of the total expenses as the **Policy** limit bears to the total amount required to dispose of the **Claim**.

Underwriters' Sanction Limitation and Exclusion Clause

We shall not be deemed to provide cover and **We** shall not be liable to pay any claim or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** 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, Australia or New Zealand.

ABOUT THE POLICY

Introduction

Where **Underwriters** agree to enter into a **Policy**, it is a contract between **Underwriters** and the **Insured** (see the definition of “**Insured**” for details of who is covered by this term). The **Policy** is entered into subject to the payment to **Underwriters** of the premium by the **Insured**, including government taxes and charges, and the **Policy** terms and conditions (including **Limits of Indemnity** and the **Excess/es**).

We will provide insurance in accordance with the terms of this **Policy**. This **Policy** is made up of this policy wording which sets out **Our** standard terms, the Certificate of Insurance and **Schedule** (which **We** issue to confirm the issue of the contract and which contain additional information specific to the **Insured** and the **Policy**), any agreed endorsements and the **Proposal**. Please read them carefully to ensure that this **Policy** meets **Your** requirements. These are all important documents and should be carefully read together and kept in a safe place for future reference.

To be valid, this **Policy** must have attached to it the Certificate of Insurance signed by an authorised officer of Arch Underwriting at Lloyd’s (Australia) Pty Ltd.

Notices

We will send all notices in relation to the **Policy** to:

- the **Named Insured’s** nominated insurance intermediary, until **Underwriters** receive written notice to the contrary from the **Named Insured** specified in the **Schedule**;
- if there is no nominated intermediary, the **Named Insured** specified in the **Schedule**, acting on behalf of all the **Insureds**.

Coverage Sections

There are five coverage sections:

Coverage Section 1 – Directors & Officers Liability/Company Reimbursement

Coverage Section 2 – Company Liability

Coverage Section 3 – Employment Practices Liability

Coverage Section 4 – Statutory Liability

Coverage Section 5 – Crime

You only have cover under those coverage sections which are listed in the **Schedule**.

Cover under all of the coverage sections is subject to the terms of that coverage section and also the general provisions including the general definitions, general extensions, general exclusions, general conditions and general claims conditions. Where there is any conflict between the provisions in a coverage section and the general provisions, the provisions in the coverage section will prevail.

GENERAL PROVISIONS APPLICABLE TO ALL COVERAGE SECTIONS

The following general definitions and interpretation, general conditions, general claims conditions, general extensions, general exclusions apply to all coverage sections.

GENERAL DEFINITIONS AND INTERPRETATION

1. Definitions

The following words used in the **Policy** (including all coverage sections) have these special meanings unless otherwise specified.

Act of Terrorism means an act, including, but not limited to, the use of force or violence or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

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

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

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

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

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

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

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

Business means all activities involved in the business carried on by **You**, as specified in the **Schedule**.

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

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

For the purposes of the General Provisions and any Exclusions sections of this **Policy**, any references to **Claim(s)** shall also be deemed to include **Media Claim(s)**, where applicable.

Computer System means electronic devices (including the software on such devices) for storing and processing data that are owned, operated or controlled by the **Named Insured** and/or any **Subsidiary**, including:

- (a) all connected peripheral devices; and
- (b) smartphones, tablets or similar devices

Credit Arrangement means any credit agreement, loan, lease or rental agreement, invoice, account or other evidence of debt.

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

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

Cyber Attack means any unauthorised instructions that are designed to alter, modify, destroy, damage, delete, record, transmit or contaminate information or computer programs or data within the **Named Insured's** internet website, intranet or computer network by anyone who illegally accesses the **Named Insured's** internet website or computer network.

Cyber Event means any actual:

- (a) **Data Breach:**
 - (i) any personal data breach as defined under the *Privacy Act 1988* (Cth), as amended, or any similar legislation concerning the control and use of personally identifiable financial, medical or other sensitive information; or
 - (ii) any acquisition, access or disclosure of confidential corporate information by a person or entity unauthorised by **You**.
- (b) **Computer System Security Failure:**
 - (i) any failure to secure the **Computer System**.
- (c) **Cyber Extortion Event:**
 - (i) a threat from a **Third Party** to intentionally attack the website or **Computer System(s)** or to publicly disclose confidential corporate information or **Personally Identifiable Information** misappropriated from the **Named Insured** and/or any **Subsidiary** if money, including any form of crypto currency, is not paid.

Damages means a monetary judgment or monetary award that the **Insured** is legally obligated to pay (including pre- or post-judgment interest and claimant's legal fees) or a monetary settlement agreed by **Us** and the **Insured**.

Damages will not mean:

- (a) fines, penalties, taxes, sanctions;
- (b) PCI Assessments;
- (c) any punitive, exemplary, or multiple damages; **We** will, however, pay punitive or exemplary damages to the extent they are insurable in any applicable jurisdiction that most favours coverage;
- (d) the return or reduction of fees, commissions, profits, or charges for goods provided or services rendered;
- (e) restitution, disgorgement of profits, or unjust enrichment;
- (f) the cost of complying with injunctive or equitable relief;
- (g) amounts the **Insured** agrees to indemnify; however, this will not apply to amounts the **Insured** would have otherwise been liable to pay in the absence of such agreement to indemnify; or
- (h) any coupons, discounts, prizes or other incentives (not including the **Insured's** profits), unless agreed in advance by **Us** in **Our** discretion.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred by **Us** or with **Our** prior written consent in the investigation, defence or settlement of a **Claim**. **Defence Costs** does not include any regular salaries, wages, overtime, fees or benefits of **You** or any of **Insured Persons**.

Deprivation of Assets Proceedings means any proceeding brought against **Insured Persons** by any **Authority** seeking:

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

Director means:

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

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

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

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

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

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

- (a) discharge or termination of employment, demotion, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote;
- (b) breach of any written or oral employment contract or quasi-employment contract;
- (c) employment-related misrepresentation, invasion of privacy, breach of data protection legislation, humiliation and defamation;
- (d) violation of employment discrimination laws (including sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual orientation, religion, maternity, pregnancy, age and disability);
- (e) violation or non-compliance with legislation regulating working hours;

- (f) failure to grant tenure, adopt adequate workplace or employment policies and procedures, furnish accurate job references;
- (g) retaliatory treatment of whistle-blowers and others; or
- (h) employment-related wrongful infliction of mental anguish or emotional distress.

Excess means, where applicable, that part of **Loss** (inclusive of **Defence Costs**) in respect of each and every **Claim**:

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

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

Insured means **You** and **Insured Persons**.

Insured Persons means:

- (a) any one or more natural persons who were, now are or will be a **Director**, secretary, officer, or **Employee** of the **Named Insured**; or any person who was or now is or may hereafter become a trustee of a superannuation fund established for the benefit of the **Employees** of the **Named Insured** by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position; and
- (b) any person who by virtue of any applicable legislation or law is deemed to be a **Director** of the **Named Insured**.

Insured Persons will not include:

- (a) any externally appointed officers such as administrators, receivers, statutory managers, liquidators, mortgagees in possession, or the like; or
- (b) any registered company or corporation.

Insured Property means the following which belong to or are in the care custody and legal control of the **Named Insured**:

- (a) local or foreign currency, coins, bank notes, bullion cheques, postal orders and money orders;
- (b) **Security**; or
- (c) tangible property.

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

Investigation means the definition set out in the individual coverage section of this **Policy** under which an indemnity is sought.

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

- (a) where there is an aggregate limit for all coverage sections in force, **Our** maximum liability for each and every **Loss** and all **Losses** in the aggregate will be the aggregate limit shown in the **Schedule**;

- (b) where there are individual **Limits of Indemnity** for each coverage section, **Our** maximum liability under each coverage section for each and every **Loss** and all **Losses** in the aggregate under that coverage section will be the individual **Limit of Indemnity** specified against that coverage section in the **Schedule**; or
- (c) a sub-limit forms part of the aggregate **Limit of Indemnity** or individual **Limit of Indemnity** and is not payable in addition to the aggregate or individual **Limit of Indemnity**.

Loss has the definition set out in the individual coverage section of this **Policy** under which indemnity is granted. For the purposes of the General Provisions and any Exclusions sections of this **Policy**, references to **Loss** shall also be deemed to include **Media Losses**, where applicable.

Media Claim means:

- (a) any written assertion of liability or potential liability, or any written demand for financial compensation, or injunctive relief made against an **Insured** by a **Third Party**, arising out of an invasion of or interference with any right of privacy committed or allegedly committed by the **Insured**; or
- (b) any written retraction or correction demand made to an **Insured** by a **Third Party**, arising out of the **Insured's Media Materials**.

Media Claim will not mean any claim for **Data Breach** as part of a **Cyber Event**.

Media Claim Defence Costs means all reasonable and necessary fees, costs and expenses incurred by **Us** (or by an **Insured** but only with **Our** prior written consent) to investigate, defend and appeal a **Media Claim** made against an **Insured**

Media Claim Defence Costs will not mean:

- (a) **Your** overhead costs, general **Business** expenses, salaries or wages incurred by **You**; or
- (b) the defence of any criminal investigation, criminal action or criminal proceeding.

Media Losses means:

- (a) **Media Claim Defence Costs**; and
- (b) **Damages** payable because of a **Media Claim** made against an **Insured**.

Media Materials means any written, printed, audio, video, electronic, digital or digitized content created by an **Insured** and distributed by the **Insured** or on the **Insured's** behalf (subject to the **Insured's** express authorisation), by email, intranet, extranet or website.

Media Materials will not mean:

- (a) content created by a **Third Party** (including but not limited to **Third Party** commentary created in response to and/or posted or affixed to any **Media Materials**);
- (b) content created or professional advice provided by the **Insured** for a **Third Party**;
- (c) industrial, architectural or tangible product designs or plans;
- (d) trading, business or company names;
- (e) product names, product packaging, product labelling or product images;
- (f) software products;
- (g) patents;
- (h) trademarks;
- (i) domain names or URLs; or
- (j) false or misleading advertising.

Merger means the occurrence of:

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

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

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

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

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

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

Period of Insurance means the time from which cover commences to the time cover expires as set out in the **Schedule**. Unless stated otherwise, cover will expire at 4.00pm local time at the place where **You** arranged the cover.

Personally Identifiable Information means any information from which an individual may be reasonably identified or contacted including an individual's name, telephone number, email address, tax file number, healthcare data, passport details, drivers licence or any other non-public personal information as defined under legislation or regulation (including any amendments thereto) concerning the control and use of **Personally Identifiable Information**.

Personally Identifiable Information does not include information that is lawfully available to the general public for any reason, including government records.

Policy means this document, the **Schedule** and any attachment to the **Schedule**, and any future documents issued to **You** which records the terms of any amendment to the **Policy** wording or **Schedule**.

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste (including material to be recycled, reconditioned or reclaimed).

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

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

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

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

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

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

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

Spouse in relation to another person means a person who is legally married to that other person and includes a person in a de facto relationship with that other person and who live with each other as spouses although not legally married to each other.

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

Statutory Fine means any monetary fine or penalty payable by an **Insured** because of a contravention of an **Act of Parliament**. **Statutory Fine** does not include any amounts payable as or calculated by reference to:

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

Subsidiary means any organisation in which (at the time of the event giving rise to the **Claim** for indemnity under the **Policy**, the organisation(s), company, partnership or sole trader named in the **Schedule**:

- (a) controls the composition of the organisation's board;
- (b) is in a position to cast, or control the casting, of more than 50 per cent of the maximum number of votes that might be cast at a general meeting of the organisation;
- (c) holds more than 50 per cent of the issued share capital of the organisation; or
- (d) controls voting rights of that organisation or has the ability to control decisions made by the board of **Directors** (whether directly or indirectly).

Tax Audit Costs means the reasonable and necessary professional fees and expenses paid to accountants or registered tax agents for advising on and responding to a **Tax Audit Notice** in respect of **Your Business**. **Tax Audit Costs** do not extend to include **Defence Costs**, amounts payable pursuant to an amended **Tax Return** including but not limited to any additional tax, duty, government impost or similar, fines or penalties imposed by a government agency following a tax audit.

Tax Audit Notice means a notice received by the **Named Insured** from the Australian Taxation Office or any other Australian (Commonwealth, State or Territory) government **Authority** which has the statutory responsibility to conduct such an investigation or examination in relation to a **Tax Return**.

Tax Return means any documentation legally required to be lodged by the **Named Insured** with the Australian Taxation office or any other Australian (Federal, State or Territory) government **Authority** or agency in respect of taxation, duties, levies or other imposts.

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

Third Party Sexual Harassment means sexual harassment, including unwelcome sexual advances, requests for sexual favours or conduct of a sexual nature against a **Third Party** occurring during the course of conducting the **Business**.

We, Us, Our, Underwriters means Certain Underwriters at Lloyd's.

Wrongful Act means the definition set out in the individual coverage section under which an indemnity is sought.

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

2. Construction and interpretation

- (a) Clause headings and the use of bold print are for reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- (b) Unless the contrary intention appears in this **Policy**:
 - (i) words importing a gender include any other gender.
 - (ii) words in the singular include the plural and conversely.
- (c) References to:
 - (i) statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, ordinances and statutory instruments made under those statutes,
 - (ii) sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes.

GENERAL CONDITIONS

The following general conditions apply to all coverage sections of this **Policy**:

1. Alteration and assignment clause

No change in, modification to or assignment of interest under this **Policy** will be effective except when made by a written endorsement to this **Policy** which is signed by an authorised officer of Arch Underwriting at Lloyd's (Australia) Pty Ltd.

2. Authorisation clause

The **Named Insured** identified in the **Schedule** agrees to act on behalf of the other **Insureds** and the other **Insureds** agree that the **Named Insured** identified in the **Schedule** may act on their behalf in respect of:

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

3. Breach of conditions

Where any **Insured** breaches any condition of this **Policy** and such breach has resulted in prejudice to the handling and/or settlement of any **Claim**, which in all other respects is otherwise covered under this **Policy**, the indemnity afforded by this **Policy** in respect of such **Claim** will be reduced to the extent of such prejudice.

4. Cancellation

The **Named Insured** may cancel this **Policy** by giving **Us** 30 days' written notice and:

- (a) if no **Claim** has been notified to **Us** under this **Policy** prior to the effective date of cancellation, **We** will make a pro-rata refund of premium for the unexpired portion of the **Period of Insurance** less 30 per cent;
- (b) if any **Claim** has been notified to **Us** under this **Policy** prior to the effective date of cancellation, there will be no refund of premium for the unexpired portion of the **Period of Insurance**.

We may cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984, in which event **We** will make a pro-rata refund of any paid Premium for the unexpired portion of the **Period of Insurance**.

5. Claims and the Limit of Indemnity

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

6. Confidentiality

The existence and terms of the **Policy** are confidential as between **You** and **Us** and must not be published, disclosed or otherwise communicated except where required by law.

7. Continuing representations

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

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

The **Insured** must immediately advise **Us** in writing if any of the following occurs during the **Period of Insurance**:

- (a) undertaking activities that are materially different from the **Business** as described in the **Schedule**;
- (b) any cancellation or suspension, or loss of or condition imposed, upon any licence, registration or authority required by the **Insured** to conduct the **Business**; or
- (c) the **Named Insured** being insolvent, bankrupt or in liquidation.

8. Goods and services tax neutrality

We and **You** agree that, to the extent possible as between **Us**, neither is to be adversely affected or advantaged by the operation of "GST". If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit the other party will provide such invoice or assistance promptly upon being requested to do so.

9. Disputes (Service of suit and jurisdiction)

The **Underwriters** accepting this **Policy** agree that:

- (a) if a dispute arises under this **Policy**, this **Policy** 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;
- (b) any summons notice or process to be served upon the **Underwriters** may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603, Level 16
1 Macquarie Place
Sydney NSW 2000

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

- (c) If a suit is instituted against any of the **Underwriters**, then all of the **Underwriters** participating in this **Policy** will abide by the final decision of such Court or any competent Appellate Court.

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

Arch Underwriting at Lloyd's (Australia) Pty Ltd
Suite 11.02, Level 11,
360 Collins Street, Melbourne VIC 3000

or by email at: claims@archinsurance.com.au

10. Severability and non-imputation

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

11. Territorial limits

The cover provided by this **Policy** is for **Claims** arising from **Wrongful Acts** committed or occurring in whole or in part anywhere in the world but excluding:

- (a) actions brought in or determined pursuant to the laws of, the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates; or
- (b) arising from the enforcement of any judgment, order or award in respect of any action brought in any Court of law in the United States of America or the Dominion of Canada and their Territories, Dependencies or Protectorates.

12. Valuation and foreign currency

All premiums, **Limits of Indemnity, Excesses, Loss** and other amounts under this **Policy** are expressed and payable in Australian Dollars. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than Australian dollars, payment under this **Policy** will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars published in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

13. Sanction Limitation and Exclusion clause

We shall not be deemed to provide cover and **We** shall not be liable to pay any claim or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** 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, Australia or New Zealand.

GENERAL CLAIMS CONDITIONS

The following general conditions apply to all coverage sections of this **Policy**:

1. Notification: What? When? Where? Who? How?

You must notify **Us** in writing of any **Claim**, **Loss** or **Circumstances** which may reasonably be expected to give rise to such a **Claim** or **Loss** as soon as reasonably practicable within the **Period of Insurance**.

You must give the notice to **Us** in writing and must provide full particulars including relevant dates, events, circumstances and persons or entities involved, including the amount of the alleged or potential **Loss**.

You and/or **Your** insurance broker or intermediary must send the notice to the following address and all notifications to **Us** will be deemed given if so notified in writing to:

*Arch Underwriting at Lloyd's (Australia) Pty Ltd
Suite 11.02, Level 11,
360 Collins Street, Melbourne VIC 3000*

or by email at: claims@archinsurance.com.au

Such notice will be effective on the date of actual receipt at the above address.

2. Your duty to minimise loss

You will take all reasonably practicable steps and precautions to avoid and minimise any liability or **Loss** which may be or is the subject of a **Claim** under this **Policy**.

3. Defence and settlement

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

4. Insured's right to contest claims

If the **Insured** does not agree with a decision made by **Us** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but **Our** liability will not exceed the amount for which the **Claim** should be settled in the opinion of a Senior Counsel appointed under General Claims Condition 8. Senior Counsel.

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

The **Insured** expressly agrees that **Our** liability in respect of such **Claim** will then be at an end.

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

5. Defence costs

- (a) **Defence Costs** are part of and not in addition to the **Limit of Indemnity** set forth in the **Schedule** and any **Defence Costs** paid by **Us** will reduce the available **Limit of Indemnity** by the amount of such **Defence Costs** paid.
- (b) Subject to General Claims Condition 6. Allocation, **We** will advance on behalf of the **Insured**, **Defence Costs** that they have incurred in connection with **Claims** made against them, prior to settlement of such **Claims**. Provided that to the extent it is finally established by judgment, settlement or other final adjudication that any such **Defence Costs** are not covered under this **Policy**, all **Insured** severally according to their interests, agree to repay to **Us** such **Defence Costs**.

6. Allocation

- (a) If a **Claim** covered by this **Policy** includes a loss or liability which is not covered by this **Policy**, **We** and **You** will use our best efforts to agree upon a fair and proper allocation between the covered and uncovered loss or liability;
- (b) If **We** and **You** cannot agree on an allocation of loss or liability, then:
 - (i) together we may agree to submit the dispute to a Senior Counsel (to be mutually agreed or failing agreement to be appointed by the current Chair of Resolution Institute whose decision will be final and whose associated costs will be regarded as **Defence Costs**; and
 - (ii) **We** will advance on a current basis **Defence Costs** that **We** believe to be covered under this **Policy** until a different allocation is agreed or is determined by Senior Counsel in accordance with this clause or is judicially determined.
- (c) Any decision by Senior Counsel under sub-paragraph (b) above, or any judicially determined allocation of loss or liability, will be applied retrospectively to all loss or liability relating to any **Claim** under this **Policy**. Any allocation or advancement on account of any amount under this **Policy** will not apply to or create any presumption with respect to the final allocation of loss or liability.

7. Order of payment

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

- (a) first pay **Loss** due under coverage Section 1 – Directors and Officers Liability/Company Reimbursement Coverage Clause 2.1. Individual Cover; and
- (b) then pay **Loss** under any other applicable coverage sections.

8. Senior Counsel clause

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

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

9. Fraudulent claims

If any **Insured** makes any application for indemnity under this **Policy** knowing that such application for indemnity is false or fraudulent, **We** may refuse to make any payment in connection with the **Claim** and may cancel the contract in accordance with the Insurance Contracts Act 1984.

10. Subrogation

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

11. Recoveries

We agree not to exercise **Our** rights of recovery against an **Insured**. All recoveries obtained by or on behalf of the **Insured** from parties other than an **Insured** in connection with the settlement or resolution of a **Claim**, and after deducting the reasonable cost of obtaining such recovery, will be applied in the following order:

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

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

12. Other insurance

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

GENERAL EXTENSIONS

The following general extensions apply to all coverage sections of this **Policy**:

1. Acquisition of Named Insured

- (a) If during the **Period of Insurance**:
- (i) the **Named Insured** merge, or consolidate with another organisation or are taken over,
 - (ii) another organisation, or person or group of organisations or persons acting in concert acquires **Securities** or voting rights that result in ownership or voting control by the other organisation or person of more than 50 per cent of the voting rights of the **Named Insured**; or
 - (iii) another organisation, or person or group of organisations or persons acting in concert secures the ability to control decisions made by the board of **Directors** of the **Named Insured**,
- cover under this **Policy** continues until termination of the **Period of Insurance** as set forth in the **Schedule** to this **Policy**, but only in respect of **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation takeover, acquisition, or the ability to control the board of **Directors**' decisions. As of the effective date of such merger, consolidation, takeover, acquisition or the ability to control the board of **Directors**' decisions, all premiums paid or due at any time under this **Policy** are deemed fully earned and non-refundable.
- (b) The **Insured** agree to provide **Us** with written notice of such merger, consolidation, takeover, acquisition or ability to control the board of **Directors**' decisions as soon as practicable, together with such further information as **We** may subsequently request.

2. New Subsidiaries

- (a) **Subsidiaries** created or acquired by **You** prior to the beginning of the **Period of Insurance** will be covered under the terms of this **Policy** for **Wrongful Acts** committed or alleged to have been committed after the date the **Subsidiary** was created or acquired so long as **Your Business** as noted in the **Schedule** remains unchanged in whole or part.
- (b) **Subsidiaries** created or acquired by **You** after the beginning of and during the **Period of Insurance**, either directly or indirectly through any existing **Subsidiary**, will be covered under the terms of this **Policy** for the **Period of Insurance** for **Wrongful Acts** committed or alleged to have been committed after such date the **Subsidiary** was created or acquired but only if:
- (i) the new **Subsidiary** is not domiciled, registered or incorporated outside of the Commonwealth of Australia or New Zealand;
 - (ii) the new **Subsidiary** does not have any of its **Securities** listed on any exchange;
 - (iii) there are no changes in whole or part to **Your Business** as **Your Business** is noted in the **Schedule**; and
 - (iv) the consolidated assets of such **Subsidiary** are less than 20 per cent of the consolidated assets of the **Named Insured** noted in the **Schedule**.
- (c) Any **Subsidiary** created or acquired by **You** after the beginning of and during the **Period of Insurance** which are excluded under b) above will be covered under the terms of this **Policy** for a period of 60 days from the date of creation or acquisition but only for **Wrongful Acts** committed or alleged to have been committed after such date the **Subsidiary** was created or acquired. **You** may apply for an extension of cover for such **Subsidiaries**. **We** will request any additional information required and if **We** accept them, **We** will provide terms and conditions, including any additional premium payable, which may be required to extend cover to these **Subsidiaries**. If **We** grant cover it will be extended via endorsement and only for **Wrongful Acts** committed or alleged to have been committed on or after **We** provide cover.

3. Previous Subsidiaries

Subsidiaries sold or otherwise dissolved or divested of by the **Named Insured** after the beginning of the **Period of Insurance** will be covered under the terms of this **Policy** for **Wrongful Acts** committed or alleged to have been committed prior to the date of sale, dissolution or other divestment as the case may be.

4. Compensation for court attendance

We will pay the **Named Insured** compensation if legal advisers, acting on behalf of the **Insured** with **Our** written consent, require any **Director** or **Employee** to attend court as a witness in connection with a **Claim** covered under this **Policy**, but only in circumstances where the **Named Insured** actually pays the **Director** or **Employee** for his/her time. Such compensation will be at the rate equivalent to such **Director's** or **Employee's** daily take home salary or wage, up to the sub-limit shown in the **Schedule** across all coverage sections and for all persons for any one **Claim**.

The **Excess** applicable to this extension is nil.

5. Continuous cover

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

- (a) providing that the failure to notify such **Circumstance** was not as a result of fraudulent non-disclosure or fraudulent misrepresentation by the **Insured**; and
- (b) subject to **You** having continuously held cover under the relevant coverage section with **Us** between the time when the **Insured** first became aware of such **Circumstance** and the time of its notification to **Us**; and
- (c) subject to any reduction of liability by **Us** under this **Policy** to the extent of any prejudice suffered by **Us** as a result of the failure to notify such **Circumstance** prior to the **Period of Insurance**;

We will accept such **Circumstance** as a valid notification, including any **Claim** arising from it, and General Exclusion 11. Known Claims and Circumstances will not apply to that **Circumstance**. The **Limit of Indemnity** under this Extension will be the lesser available under the terms of the **Policy** in force at the time that the **Insured** first became aware of the **Circumstances** and this **Policy**. The terms of this **Policy** will otherwise apply.

6. Discovery Period

If this **Policy** is not renewed or replaced at the end of the **Period of Insurance** the **Insured** may purchase a **Discovery Period** of 12 months commencing from the end of the **Period of Insurance** during which time the **Insured** may continue to notify **Us** of any **Claims** but only **Claims** based on a **Wrongful Act** committed prior to the expiry of the **Period of Insurance**.

The **Insured** must request this **Discovery Period** in writing prior to the end of the **Period of Insurance**. We may offer this **Discovery Period** at an additional premium and on such terms and conditions as We determine. This extension is not available if an administrator, receiver, provisional liquidator or liquidator is appointed in relation to **You**.

7. Estates and legal representatives

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

8. Financial Impairment of Named Insured

If any of **Insured Persons** are unable to obtain the full benefit of a right to indemnity against the **Named Insured** to which he or she is entitled, by reason only of the **Named Insured** suffering **Financial Impairment** and having insufficient funds available so as to indemnify **Insured Persons**, then **We** will indemnify **Insured Persons** against **Loss** arising from any **Claim**.

The burden of adducing satisfactory proof to obtain the benefit of this extension will rest entirely with **Insured Persons** and will include the production of documentary evidence of the assets and liabilities of the **Named Insured** and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

9. Public relations & crisis management costs

We will pay the reasonable and necessary costs and expenses of a professional firm which advises on public relations matters retained by the **Named Insured** in order to prevent or limit adverse effects or negative publicity which it is reasonably anticipated may arise from a **Claim** or **Investigation** covered under this **Policy**.

This extension is subject to:

- (a) no costs or expenses being incurred without **Our** prior written consent; and
- (b) **Our** being reasonably satisfied that any expenditure with such a firm will be more than proportionately offset by reduced **Claims** costs to **Us**; and
- (c) the sub-limit shown in the **Schedule** across all coverage sections of this **Policy**.

10. Media Claims

We will indemnify the **Insured** against **Media Losses** arising out of any **Media Claim** made against the **Insured** during the **Period of Insurance**.

The coverage under this extension is subject to the aggregate sub-limit shown in the **Schedule** for all **Media Claims** across all coverage sections of this **Policy**.

GENERAL EXCLUSIONS

The following general exclusions apply to all coverage sections of this **Policy**:

We will not be liable to indemnify **You** for any **Claim** made under this **Policy**:

1. Asbestos

which arises directly or indirectly from or is in any way connected to **Asbestos**, **Asbestos** fibres or derivatives of **Asbestos**.

2. Silica

which arises directly or indirectly from or is in any way connected to any actual or alleged inhalation of, or ingestion, or absorption of silica or silica-related dust.

3. Bodily injury and property damage

which arises directly or indirectly from or is in any way connected to any bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof.

This exclusion will not apply to employment-related wrongful infliction of mental anguish or emotional distress to the extent covered as an **Employment Related Wrongful Act**.

4. Contractual liability

which arises directly or indirectly from or is in any way connected to any contractual liability, warranty or guarantee which **You** have assumed or provided, except if **You** would have been liable in the absence of the contractual liability, warranty or guarantee.

5. Cyber

which arises directly or indirectly from or is in any way connected to a **Cyber Event** or a **Cyber Attack**. However, this exclusion shall not apply in respect of Coverage Section 1 – Directors & Officers Liability/Company Reimbursement.

6. Damages

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

7. Franchise liability

which arises directly or indirectly from or is in any way connected to any franchise agreement or the absence of a franchise agreement.

8. Major shareholder

brought or maintained by or on behalf of any shareholder holding or controlling (directly or beneficially) 15 per cent or more of the voting shares or rights or issued capital of the **Named Insured** if the **Wrongful Act** occurred or allegedly occurred any time after the date on which that shareholder became a major shareholder.

9. Fraudulent and dishonest conduct

which arises directly or indirectly from or is in any way connected to:

- (a) any dishonest, fraudulent, criminal, reckless or malicious act or omission of any **Insured** or of:
 - (i) any company, person or entity which has a beneficial interest in the **Named Insured**; or
 - (ii) any of **Your** consultants, contractors, sub-contractors, or agents.
- (b) any wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by any of any **Insured** or **Your** consultants, contractors, sub-contractors, or agents;
- (c) any **Insured** having gained in fact any personal advantage to which he/she was not legally entitled; or
- (d) such **Insured** having improperly benefited in fact from **Securities** transactions as a result of information that was not available to other sellers and/or purchasers of such **Securities**

except to the extent covered under Coverage Section 5 Crime.

However, this exclusion will only apply to the extent that the conduct specified above has been established by:

- (i) a written admission by the **Insured** or any person authorised to make such an admission; or
- (ii) an adjudication in any judicial, administrative, or alternative dispute resolution proceeding

at which time the **Insured** will reimburse **Us** for all payments made in connection with such conduct and **Our** duties in respect of the **Claim** or **Investigation** will cease.

10. Insolvency

which arises directly or indirectly from or is in any way connected to the **Financial Impairment**, bankruptcy, insolvency, receivership or administration of the **Named Insured**, any **Associated Company**, Non Profit Entity or other entity for which **Outside Positions** cover is confirmed in the **Schedule**.

11. Known Claims and Circumstances

which arises directly or indirectly from or is in any way connected to any **Claim** made prior to the commencement of the **Period of Insurance**, or in respect of any **Claim** or **Circumstances**:

- (a) notified under any previous contract or **Policy**;
- (b) known to **You** at the commencement of the **Period of Insurance** and which **You** considered or which a reasonable person in **Your** position would or might have considered may give rise to a **Claim**; or
- (c) stated in any **Proposal**, questionnaire, submission or declaration in relation to this **Policy** or any earlier contract or **Policy**.

This exclusion relates to all **Claims**, and **Defence Costs**, arising out of the act, error or omission which gives rise to the excluded **Circumstance** irrespective of how that **Circumstance** is reported, discovered, notified or expressed.

12. Non-compliant building products

which arises directly or indirectly from or is in any way connected to the specification, use or approval of any building product or material which, at the time of use or approval, was not in compliance with the National Construction Code of Australia or applicable Australian Standards or equivalent provisions in New Zealand.

13. Personal profit

based upon, arising (directly or indirectly) out of or attributable in any way to any **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** was not legally entitled. This Exclusion does not apply to Coverage Section 5 – Crime.

14. Pollution

which arises directly or indirectly from or is in any way connected to or based upon or attributable to or in any way connected with **Pollution**, except that:

- (a) under Coverage Section 1 – Directors and Officers Liability/Company Reimbursement, **We** will pay, on behalf of **Insured Persons**, **Defence Costs** up to the sub-limit shown in the **Schedule**, arising from any **Claim** first made against them and notified during the **Period of Insurance** and which **Claim** involves the commission of an alleged criminal or regulatory offence in respect of **Pollution** occurring or committed in Australia or New Zealand only; and
- (b) under Coverage Section 4 – Statutory Liability, **We** will pay, on behalf of the **Named Insured**, **Defence Costs** up to the sub-limit shown in the **Schedule** for any **Claim** first made and notified to **Us** during the **Period of Insurance** for a **Wrongful Act** in respect of **Pollution** occurring or committed in Australia or New Zealand only.

15. Product liability

which arises directly or indirectly from or is in any way connected to goods, products or merchandise (including containers in each case) manufactured, produced, processed, treated, sold, supplied, distributed, assembled, installed, serviced, handled or dealt with in any way by or on behalf of an **Insured**.

16. Professional services

which arises directly or indirectly from or is in any way connected to:

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

17. Retroactive Date

which arises directly or indirectly from or is in any way connected to any **Wrongful Act**, criminal act or **Tax Audit Costs** committed, occurring or incurred prior to the **Retroactive Date** specified in the **Schedule**. This exclusion extends to and includes any **Claim** or **Loss** relating to or in any way connected with the original subject matter or conduct giving rise to such **Claim** or **Loss** including any repetition or continuation of any such act, error or omission occurring after the **Retroactive Date**.

18. Social Media

which arises directly or indirectly from or is in any way connected to any content which is posted, distributed or published on any social media platform.

19. Securities

which arises directly or indirectly from or is in any way connected to:

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

20. War or terrorism

which arises directly or indirectly from or is in any way connected to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) any **Act of Terrorism**.

Damage, **Loss**, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to subparagraphs (a) or (b) above is also excluded.

21. Radioactive contamination

which arises directly or indirectly from or is in any way connected to:

- (a) **Loss** or damage to property eligible for insurance by the relevant Nuclear Insurance Pool and/or Association; or
- (b) **Loss**, cost, damage, liability or expense directly or indirectly caused by or contributed to or arising from:
 - (i) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - (iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
 - (iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

COVERAGE - SECTION 1 - DIRECTORS & OFFICERS LIABILITY/COMPANY REIMBURSEMENT

Note: This Coverage Section 1 is to be read together with the General Provisions section of this Policy.

1. Definitions

The following additional definitions apply to this Coverage Section 1 only:

Claim means:

- (a) the receipt of any written demand for compensation or damages or threatening commencement of proceedings against an **Insured Person** alleging a **Wrongful Act**;
- (b) the service of any civil or arbitral proceeding seeking compensation from an **Insured Person** alleging a **Wrongful Act**;
- (c) the service of any criminal prosecution against an **Insured Person** alleging a **Wrongful Act**;
- (d) any **Investigation**; or
- (e) any **Pre-Investigation**.

Investigation means a formal or official external investigation, examination or inquiry into the **Named Insured** or an **Insured Person** in their capacity as such **Insured Person** alleging a **Wrongful Act** at which the attendance of the **Insured Person** is first required or requested in writing by the investigating body during the **Period of Insurance**. **Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than the **Named Insured** or an **Insured Person**.

Investigation Expenses means the necessary and reasonable legal costs incurred by or on behalf of the **Insured Person** with **Our** prior written consent, not to be unreasonably withheld or delayed, directly in connection with the **Insured Person** co-operating with the **Investigation**.

Loss means any amount which **Insured Persons** become legally obligated to pay in respect of any **Claim** first made during the **Period of Insurance**. Such **Claim** must be made against **Insured Persons** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements, **Defence Costs** and **Investigation Expenses**.

Pre-Investigation means:

- (a) a raid or on-site visit to any **Named Insured** or **Insured Person** by a regulator, established under statute, first occurring during the **Period of Insurance** that involves the production, review, copying or confiscation of records or interviews of any **Insured Person**; or
- (b) any formal notification by the **Named Insured** or an **Insured Person** to any regulator, established under statute, first given during the **Period of Insurance**, where the **Named Insured** or an **Insured Person** reasonably considers that a material breach of the **Named Insured's** or the **Insured Person's** legal or regulatory duty has occurred or may occur; or
- (c) an internal inquiry conducted by the **Named Insured** if and to the extent such an inquiry is requested by such regulator or official body, following a formal notification given in (b) above.

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

2. Insuring Clauses

The following insuring clauses apply to this Coverage Section 1 only:

2.1 Individual cover

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

2.2 Your reimbursement cover

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

3. Automatic Extensions

The following automatic extensions apply to this Coverage Section 1 only:

3.1 Automatic reinstatement of the Limit of Indemnity for Non-Executive Directors

In the event that the **Limit of Indemnity** and all other indemnification available to a **Non-Executive Director** is exhausted **We** will reinstate the **Limit of Indemnity** (not to exceed the aggregate **Limit of Indemnity**) once for all **Non-Executive Directors**, provided that this provision is only available to those of **Insured Persons** who are not an executive **Director** of a **Named Insured**.

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

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

3.2 Bail and Civil Bond Expenses

We will pay the cost of **Bail and Civil Bond Expenses** for **Insured Persons** incurred in connection with a **Claim** that is covered under this **Policy** subject to:

- (a) no costs or expenses being incurred without **Our** prior written consent; and
- (b) the sub-limit shown in the **Schedule**.

3.3 Deprivation of Assets Proceedings

We will pay the reasonable and necessary fees, costs and expenses incurred by **Insured Persons** arising from any **Deprivation of Assets Proceedings** up to the sub-limit shown in the **Schedule**.

3.4 Directors' tax liability

We will pay, on behalf of **Insured Persons** any personal liability **Insured Persons** incur with respect to the unpaid taxes of a **Named Insured** due to the **Named Insured's Financial Impairment** subject to:

- (a) a sub-limit of indemnity as shown in the **Schedule**;
- (b) only where the **Named Insured** has failed to pay such taxes solely because of the **Named Insured's Financial Impairment**; and
- (c) the failure to pay such taxes is not criminal, wilful, reckless or deliberate.

3.5 Employment superannuation scheme

We will pay, on behalf of **Insured Persons**, **Loss** in respect of any **Claim** by reason of any **Wrongful Act** committed in their individual or collective capacities as trustees of a **Named Insured's Stand Alone Superannuation Fund**. Cover provided by this extension will not be excluded solely on the grounds that a **Claim** is brought by a member of the superannuation or pension scheme who is also a **Director** or officer of the **Named Insured**.

3.6 Extradition expenses

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

- (a) an accredited counsellor;
- (b) an accredited tax advisor;

subject to the sub-limit shown in the **Schedule**.

3.7 Outside Position liability

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

3.8 Retired Directors

In the event that any of **Insured Persons** cease to be a **Director** or officer of the **Named Insured** prior to the expiry of the **Period of Insurance** for reasons other than:

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

then **Insured Persons** will be entitled to a **Discovery Period** for a period of 84 months at no additional premium, provided always that this **Discovery Period** will not apply where **You** renew or replace this coverage section (whether with **Us** or not).

3.9 Spousal liability

If a **Claim** against **Insured Persons** includes a **Claim** against **Insured Person's Spouse** solely by reason of:

- (a) the legal status as a **Spouse** of **Insured Persons**; or
- (b) ownership or interest in property which the claimant asserts an interest in or right to in connection with **Wrongful Acts** of **Insured Persons** then:
 - (i) all **Loss** which such **Spouse** becomes legally obligated to pay by reason of such **Claim** will be treated for purposes of this coverage section as **Loss** which **Insured Persons** become legally obligated to pay on account of the **Claim** made against **Insured Persons**;
 - (ii) all terms and conditions of this coverage section, including without limitation the **Excess** if any, applicable to **Loss** incurred by **Insured Persons** in the **Claim** will also apply to such spousal **Loss**; and
 - (iii) the cover provided by this extension does not apply to the extent the **Claim** alleges any act or omission by **Insured Person's Spouse**, independent of **Insured Persons**.

3.10 Emergency Defence Costs

Notwithstanding the requirement for **Defence Costs** to be incurred with **Our** prior written consent, in the event of an **Emergency**, an **Insured Person** shall be entitled to incur **Defence Costs** without **Our** prior written consent for a period of 30 days immediately following such **Emergency**, provided that:

- (a) It is not reasonably practicable for the **Insured Person** to seek **Our** prior written consent before such **Defence Costs** are incurred as a direct result of the **Emergency**; and
- (b) Any **Defence Costs** incurred under this Automatic Extension 3.10 shall be subject to a sub-limit of 10% of the **Limit of Indemnity** in the aggregate, which forms part of and is not in addition to the **Limit of Indemnity**.

4. Exclusions

The following additional exclusions apply to this Coverage Section 1 only.

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

4.1 Anti-competitive practices

which arises directly or indirectly from or is in any way connected to:

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

4.2 Employment Related Wrongful Act

which arises directly or indirectly from or is in any way connected to any **Employment Related Wrongful Act**.

4.3 Fines and penalties

which consists of fines (including but not limited to any **Statutory Fine**) or penalties.

4.4 Insured versus Insured

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

- (a) any **Claim** brought by **Insured Persons** solely for a contribution or indemnity in respect of a **Claim** brought against any other of **Your** people and which is otherwise covered under another coverage section of this **Policy**; or
- (b) any **Claim** brought in **Your** name as a shareholders' derivative action, provided that such **Claim** is not solicited or assisted by any of **Insured Persons**; or
- (c) any **Claim** brought in **Your** name by a liquidator, administrator, or receiver or manager, provided that such **Claim** is not solicited or assisted by any of **Insured Persons**.

4.5 Outside Position

which arises directly or indirectly from or is in any way connected to a **Wrongful Act** by **Insured Persons** in an **Outside Position**, if such **Claim** is brought or maintained by or on behalf of the entity in which **Insured Persons** serves, or by or on behalf of any **Director**, officer or trustee of such entity except:

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

4.6 Superannuation liabilities

which arise directly or indirectly from or are in any way connected to:

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

4.7 Tax

which arises directly or indirectly from or in any way connected to tax obligations of any kind. This exclusion shall not apply to Extension 3.4 Directors' tax liability.

COVERAGE - SECTION 2 - COMPANY LIABILITY

Note: This Coverage Section 2 is to be read together with the General Provisions section of this Policy.

1. Definitions

The following additional definitions apply to this Coverage Section 2 only:

Claim means:

- (a) the receipt of any written demand for compensation or damages or threatening commencement of proceedings against the **Named Insured** alleging a **Wrongful Act**;
- (b) the service of any civil or arbitral proceeding seeking compensation from the **Named Insured** in respect of an actual or alleged **Wrongful Act**; or
- (c) any **Tax Audit Costs** incurred by the **Named Insured**.

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

However, **Loss** does not include any amount for which the **Named Insured** is absolved from payment, or payable by **Named Insured** under any warranty, guarantee or for money payable to a **Third Party** for goods or services supplied to the **Named Insured**.

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

2. Insuring clause

The following insuring clause applies to this Coverage Section 2 only:

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

3. Automatic extensions

The following automatic extensions apply to this Coverage Section 2 only:

3.1 Breach of contract defence costs

Notwithstanding exclusion 4.2 Breach of contract, and subject to the **Excess**, **We** will pay **Defence Costs** arising from any **Claim** in connection with an unintentional, alleged breach of any express contract or agreement with a **Third Party** by the **Named Insured** in the normal course of conducting **Your Business** as stated in the **Schedule**. **Our** total liability during the **Period of Insurance** for all **Claims** under this extension will not exceed the sub-limit shown in the **Schedule**.

3.2 Tax Audit Costs

Subject to the **Excess** in respect of **Tax Audit Costs** as specified in the **Schedule**, **We** will pay **Tax Audit Costs** up to the sub-limit shown in the **Schedule**.

4. Exclusions

The following additional exclusions apply to this Coverage Section 2.

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

4.1 Anti-competitive practices

which arises directly or indirectly from or is in any way connected to:

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

4.2 Breach of contract

which arises directly or indirectly from or in any way connected to any liability of the **Named Insured** under any written or verbal contract or agreement (other than as provided in extension 3.1). However, this exclusion will not apply to any liability that would have attached to the **Named Insured** in the absence of such contract.

4.3 Fines and penalties

which consists of fines or penalties

4.4 Employment Related Wrongful Acts

arising out of or connected with an **Employment Related Wrongful Act**.

4.5 Intellectual property

which arises directly or indirectly from or is in any way connected to any actual or alleged infringement, violation, plagiarism, breach of intellectual property or copyright, patent, trademark or trade secret, however, this exclusion shall not apply to any **Media Claims** alleging the inadvertent disclosure of a trade secret.

4.6 Intentional Claims

that the **Named Insured** has intentionally encouraged.

4.7 Motor, air or marine

which arises directly or indirectly from or is in any way connected to an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic.

4.8 Product liability and product recall

arising directly or indirectly from or in any way connected to:

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

4.9 Statutory liability

which arises directly or indirectly from or is in any way connected to an actual or alleged offence under an **Act of Parliament**.

4.10 Trading debts

which arises directly or indirectly from or is in any way connected to any trading or business debt incurred by the **Named Insured**.

4.11 Employment Related Wrongful Act

which arises directly or indirectly from or is in any way connected to any **Employment Related Wrongful Act**.

4.12 Tax

which arises directly or indirectly from or in any way connected to tax obligations of any kind. This exclusion shall not apply to Extension 3.2 **Tax Audit Costs**.

4.13 Fees

which arises directly or indirectly from or in any way connected to unpaid Fees

COVERAGE - SECTION 3 - EMPLOYMENT PRACTICES LIABILITY

Note: This Coverage Section 3 is to be read together with the General Provisions section of this Policy.

1. Definitions

The following additional definitions apply to this Coverage Section 3 only:

Claim means:

- (a) the receipt of any written demand for compensation or damages or threatening commencement of proceedings against a **Named Insured** or **Insured Person** alleging an **Employment Related Wrongful Act** or **Third Party Sexual Harassment**; or
- (b) the service of any civil or arbitral proceeding seeking compensation from the **Named Insured** or **Insured Person** in respect of an actual or alleged **Employment Related Wrongful Act** or **Third Party Sexual Harassment**.

Loss means any amount which the **Named Insured** or an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made during the **Period of Insurance**. Such **Claim** must be made against the **Named Insured** or the **Insured Person** for **Employment Related Wrongful Acts** or **Third Party Sexual Harassment** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**.

Loss does not include:

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

2. Insuring Clauses

The following insuring clauses apply to this Coverage Section 3 only.

- (a) **We** will pay **Loss** for any **Claim** for an **Employment Related Wrongful Act** or **Third Party Sexual Harassment** first made, and notified to **Us**, during the **Period of Insurance**.
- (b) Subject to the **Excess** in respect of **Employment Practices Liability** or **Third Party Sexual Harassment** as specified in the **Schedule**, **We** will indemnify **You**, up to the sub-limit shown in the **Schedule** for any **Claim** in connection with any actual or alleged **Third Party Sexual Harassment** which is first made and notified to **Us** during the **Period of Insurance**.

3. Exclusions

The following additional exclusions apply to this coverage section.

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

3.1 Employee entitlements

based upon, directly or indirectly arising from or attributable to **Employee** benefit arrangements of any kind (whether during or post-employment) including but not limited to:

- (a) any amounts payable under or by reference to any statute or any express or implied term of any employment agreement or otherwise;
- (b) provision for unemployment, redundancy, retirement, sickness, disability;
- (c) provision for any type of leave including but not limited to annual leave, parental leave or personal leave;
- (d) superannuation;
- (e) accident, life, medical, disability or other welfare plans;
- (f) profit sharing or deferred remuneration plans;
- (g) compensation payable in respect of a contract of employment alleged to be unfair.

3.2 Employee remuneration

for the payment of any back pay, remuneration or benefit to any of **Insured Persons** who has been reinstated into their former position after an **Employment Related Wrongful Act**.

3.3 Industrial action

which arises directly or indirectly from or is in any way connected to **Employment Related Wrongful Acts** committed during any lockout, strike, picket, stand down or suspension, or other industrial dispute.

3.4 Modifications to workplace

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

3.5 Non-compliance

for non-compliance with any judgment, award, determination or demand against the **Named Insured** issued or published by any Employment Relations Authority, Employment Court, Court of Appeal, Human Rights Commission, Complaints Review Tribunal, Privacy Commission, workplace health and safety regulator or any other court or equivalent statutory body.

3.6 Redundancy compensation

for failure by the **Named Insured** to pay adequate redundancy compensation or benefit in accordance with any legal requirement to any of **Insured Persons** whose employment is terminated by reason of redundancy.

3.7 Statutory liability

which arises directly or indirectly from or is in any way connected to any statute relating to workers compensation, accident compensation or work health and safety.

COVERAGE – SECTION 4 – STATUTORY LIABILITY

Note: This Coverage Section 4 is to be read together with the General Provisions section of this Policy.

1. Definitions

The following additional definitions apply to this Coverage Section 4:

Claim means:

- (a) the receipt of any written communication by a regulatory, governmental, professional or other authorised institution served upon an **Insured** alleging a **Wrongful Act** and threatening commencement of legal proceedings;
- (b) the service of any document marking the beginning of legal proceedings against an **Insured** alleging a **Wrongful Act**; or
- (c) Any **Investigation**.

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

Loss does not include:

- (a) any amounts representing damages or compensation;
- (b) any compliance, remedial, reparation or restitution costs, enforcement orders; or
- (c) any matter deemed uninsurable under the law applicable to this coverage section.

Wrongful Act means any act or omission by an **Insured** in the course of or connection with **Your Business** that results in an allegation that the **Insured** has committed a contravention of an **Act of Parliament** which is punishable by **Statutory Fine** or imprisonment.

Investigation means a formal or official external investigation, examination or inquiry into the **Named Insured** alleging a **Wrongful Act**, at which the attendance of the **Named Insured** or its representative is first required or requested in writing by the investigating body, during the **Period of Insurance**. **Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than the **Named Insured**.

Investigation Expenses means the necessary and reasonable legal costs incurred by or on behalf of the **Named Insured** or its representative with our prior written consent, not to be unreasonably withheld or delayed, directly in connection with the **Named Insured** co-operating with the **Investigation**.

2. Insuring Clause

The following insuring clause applies to this coverage section only:

We will pay, on behalf of an **Insured**, **Loss** for any **Claim** for a **Wrongful Act** first made and notified to **Us** during the **Period of Insurance** up to the sub-limit shown in the **Schedule**. This sub-limit forms part of and is not in addition to the **Limit of Indemnity** shown in the **Schedule** in respect of Coverage Section 1.

3. Automatic extensions

The following automatic extensions apply to this Coverage Section 4 only:

3.1 Workplace health and safety defence costs and Investigation Expenses

Notwithstanding General Exclusion 3 (Bodily Injury and Property Damage), **We** will pay **Defence Costs** and **Investigation Expenses** arising from any **Claim**, first made and notified to **Us** during the **Period of Insurance**, alleging involuntary manslaughter, gross negligence manslaughter or a **Wrongful Act** in breach of applicable health and safety legislation, including Chain of Responsibility laws relating to the operation of heavy vehicles, in Australia or New Zealand. Our total liability during the **Period of Insurance** for all **Claims** under this extension will not exceed the sub-limit shown in the **Schedule**.

4. Exclusions

The following additional exclusions apply to this Coverage Section 4 only:

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

4.1 Anti-competitive practices

arising directly or indirectly out of or in connection with:

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

4.2 Enforcement order

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

4.3 Corporations Act

arising out of or based upon, attributable to, or in any way involving any breach of sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth) or similar law in any other jurisdiction.

4.4 Motor, air and marine

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

4.5 Tax

arising from or in any way connected with any direct or indirect tax obligations of any kind.

4.6 Unreasonable plea

in respect of which the **Named Insured** is intending to plead guilty or not guilty, but the intended plea is not in **Our** view reasonable, based on the available evidence, the weight and cogency of that evidence, the burden of proof and the applicable law.

4.7 Your Business

arising out of activities which are not either:

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

COVERAGE - SECTION 5 - CRIME

Note: This Coverage Section 5 is to be read together with the General Provisions section of this Policy.

1. Definitions

The following additional definitions apply to this Coverage Section 5:

Computer Fraud means the unlawful loss of the **Named Insured's** money as a result of the loss of control of a **Computer System**, by manipulation of computer hardware, software programmes or systems, by any person to which the **Named Insured** has not given authorised access.

Direct Financial Loss means financial loss sustained by the **Named Insured** as a result of a single act or series of related, continuous or repeated acts of **Internal Crime**, **External Crime**, **Computer Fraud** or **Theft** on or after the **Retroactive Date**.

Discovered means the knowledge of any **Direct Financial Loss** by an **Insured Person** (other than any person who has committed any act of fraud or dishonesty).

External Crime means an act or acts, committed by a person who is not an **Insured Person**:

- (a) which causes the **Named Insured** to act upon or give value for a negotiable instrument that is an imitation of an authentic negotiable instrument and which deceives an **Insured Person** into believing that the imitation is the authentic original negotiable instrument; or
- (b) which is the signing or endorsing or copying of the signature in the name of a genuine person by another person without authority and with the intent to deceive. Such signature must have been written on a cheque, a credit card, a credit card transaction slip or a bill of exchange, received or given by the **Named Insured** in consequence of which the **Named Insured** have acted or transferred funds or goods causing the **Insured** to sustain a loss.

External Crime does not include a genuine signature applied without authority. A signature may be hand-written, mechanically, or electronically produced or reproduced.

Internal Crime means an act or acts of fraud or dishonesty committed by an **Insured Person** acting alone or in collusion with others, which results in an actual personal gain for the **Insured Person** (other than salary, commission, fees, bonus, promotion, award, profit sharing, pension or any other employment benefit), and which such **Insured Person** knows will cause the **Named Insured** to suffer **Direct Financial Loss**. For the avoidance of doubt, recklessness or inadvertence do not constitute knowledge.

Social Engineering Fraud means impersonation by any means of:

- (a) an **Insured Person**
- (b) client or customer of the **Named Insured**; or
- (c) a party with which the **Named Insured** has a written contract for the sale or purchase of goods or services

by a **Third Party** to manipulate an **Insured Person** to issue an instruction to a financial institution to debit, pay, deliver or transfer money or securities from an account maintained by the **Named Insured** to that **Third Party** or another person or entity.

Theft means the unlawful taking of the **Named Insured's** money, securities or property, by a person who is not an **Insured Person**, occurring:

- (a) within the premises of the **Named Insured**,
- (b) within the interior of any banking premises; or
- (c) while in transit and in the care, custody and control of an **Insured Person** following the actual or threatened use of force or violence.

2. Insuring Clauses

The following insuring clauses apply to this Coverage Section 5 only:

2.1 Automatic cover

- (a) We will pay on behalf of the **Named Insured** any **Direct Financial Loss** which takes place in the ordinary course of the **Business** and which is first **Discovered** and first notified to **Us** during the **Period of Insurance**.
- (b) We will pay, up to the sub-limit shown in the **Schedule**, to or on behalf of the **Named Insured** reasonable fees, costs and expenses of a fraud investigator, incurred with **Our** prior written consent, to establish the existence and/or amount of any covered **Direct Financial Loss**, **External Crime** or **Theft**. If the **Named Insured** is unable to establish a covered **Direct Financial Loss**, **External Crime** or **Theft** any fees, costs and expenses incurred by or on behalf of the **Named Insured** will be the responsibility of the **Named Insured** and not **Us**.
- (c) We will pay, up to the sub-limit shown in the **Schedule**, to or on behalf of the **Named Insured** reasonable legal fees, costs and expenses incurred in the defence of any written demand, **Claim**, suit or legal proceeding which results directly from a covered **Direct Financial Loss**.

2.2 OPTIONAL extension for Social Engineering Fraud

- (a) We will pay, up to the sub-limit shown in the **Schedule**, on behalf of the **Named Insured** any **Direct Financial Loss**:
 - (i) directly resulting from **Social Engineering Fraud**; and
 - (ii) which is first **Discovered** and first notified to **Us** during the **Period of Insurance**.

3. Additional exclusions

The following additional exclusions apply to this Coverage Section 5.

We will not provide coverage for:

3.1 Agents

any act, error or omission of any independent contractor (other than an **Employee**), broker, merchant, external lawyer or external accountant, or other similar agent or representative. This exclusion will not apply to any organisation to which the **Named Insured** has outsourced any normal administrative function under a written contract.

3.2 Closely held

any **Direct Financial Loss** caused by or involving any person who owns or controls more than 10 per cent of the issued share capital of the **Named Insured**.

3.3 Trade secrets

loss of or damage to any trade secrets, confidential processing methods or confidential information of any kind.

3.4 Indirect loss

indirect or consequential loss or damage or destruction to any premises or building.

3.5 Loss sustained after Discovery

any **Direct Financial Loss** sustained after the **Direct Financial Loss** was first **Discovered**.

3.6 Natural perils

any loss or damage caused by typhoon, hurricane, cyclone, volcanic eruption, earthquake, subterranean fire or other convulsion of nature and contemporaneous or ensuing loss or damage by fire, flood or looting.

3.7 Moth or vermin

any loss or damage caused by moth or vermin.

3.8 Profit and loss computation

Direct Financial Loss which can only be proven solely by:

- (i) a profit and loss computation or comparison; or
- (ii) a comparison of inventory with an actual physical event.

3.9 Social engineering

any **Direct Financial Loss**, **External Crime** or **Theft** caused or contributed to by the impersonation by any means of:

- (i) an **Insured Person**;
- (ii) client or customer of the **Named Insured**; or
- (iii) a party with which the **Named Insured** has a written contract for the sale or purchase of goods or services,

by a **Third Party** to manipulate an **Insured Person** to issue an instruction to a financial institution to debit, pay, deliver or transfer money or securities from an account maintained by the **Named Insured** to that **Third Party** or another person or entity.

This exclusion does not apply to the optional extension for **Social Engineering Fraud**.

3.10 Segregation of duties

any **Direct Financial Loss**, **External Crime** or **Theft** directly or indirectly caused by or contributed to or in any way involving an instruction(s) to the **Insured's** bank to transfer money or securities from an account maintained by a **Named Insured** that is not authorised by at least two **Employees** with the authority to do so.

4. Additional Claims conditions

The following additional claims conditions apply to this Coverage Section 5 only:

Once **Discovered**, **You** must give **Us** notice in writing within 28 days:

- (a) of any loss or liability which gives rise, or may give rise, to a **Claim** under this **Policy**; or
- (b) of any reasonable cause for suspicion of fraud or dishonesty on the part of any of **Your Employees**, whether giving rise to a **Claim** under this **Policy** or not.

We will not be liable for any loss sustained in consequence of any act or omission on the part of the **Employee** concerned after the date such act or omission was **Discovered**.

PRIVACY NOTICE

Unless the context otherwise provides, in this section 'we', 'our' or 'us' means Certain Underwriters at Lloyd's and Arch Underwriting at Lloyd's (Australia) Pty Ltd and their related entities.

Personal information is essentially any information or an opinion about an identified individual, or an individual who is reasonably identifiable. See the Privacy Act 1988 (Cth) (the Act) for full details of what constitutes personal information.

This privacy notice details how we collect, disclose and handle personal information.

Why we collect your personal information

We collect personal information (including sensitive information) so we can:

- identify you and conduct necessary checks;
- determine what service or products we can provide to you e.g. offer our insurance products;
- issue, manage and administer services and products provided to you or others, including claims investigation, handling and settlement;
- improve our services and products, e.g. training and development of our representatives, product and service research and data analysis and business strategy development.

What happens if you don't give us your personal information?

If you choose not to provide us with the information we have requested, we may not be able to provide you with our services or products or properly manage and administer services and products provided to you or others.

How we collect your personal information

Collection can take place through websites (from data input directly or through cookies and other web analytic tools), email, by telephone or in writing.

We collect it directly from you unless you have consented to collection from someone other than you, it is unreasonable or impracticable for us to do so, or the law permits us to.

If you provide us with personal information about another person, you must only do so with their consent and agree to make them aware of this privacy notice.

Who we disclose your personal information to

We share your personal information with third parties for the collection purposes noted above.

The third parties include: our related companies and our representatives who provide services for us, other insurers and reinsurers, our claim management partner(s), your agents, our legal, accounting and other professional advisers, data warehouses and consultants, investigators, loss assessors and adjusters, other parties we may be able to claim or recover against, and anyone either of us appoint to review and handle complaints or disputes and any other parties where permitted or required by law.

We may need to disclose information to persons located overseas who will most likely be located in the United Kingdom. Who they are may change from time to time. You can contact us for details or refer to our Privacy Policy available at our website www.archinsurance.com.au

In some cases we may not be able to take reasonable steps to ensure they do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire our services and products you agree that you cannot seek redress under the Act or against us (to the extent permitted by law) and may not be able to seek redress overseas.

More information, access, correction or complaints

For more information about our privacy practices including how we collect, use or disclose information, how to access or seek correction to your information or how to complain in relation to a breach of the Australian Privacy Principles and how such a complaint will be handled, please refer to our Privacy Policy. It is available at our website www.archinsurance.com.au or by contacting us on (02) 8284 8400 EST 9am-5pm, Monday-Friday.

Privacy complaints: We have established a Privacy Complaints Handling Procedure to deal with any complaints you may have about how we have collected, used or managed your personal information. If you would like to make a complaint, please contact:

The Privacy Officer,
Arch Underwriting at Lloyd's (Australia) Pty Ltd,
Level 10, 155 Clarence Street, Sydney NSW 2000

or email complaints@archinsurance.com.au

Your complaint will be taken seriously and investigated thoroughly.

If you are not satisfied with our final decision, you can direct your complaint to the Federal Privacy Commissioner either on 1300 363 992 (for the cost of a local call anywhere in Australia) or by mail to GPO Box 5218, Sydney NSW 2001.

Your Choices: By providing us with personal information, you and any person you provide personal information for, consent to this use and these disclosures unless you tell us otherwise. If you wish to withdraw your consent, including for things such as receiving information on products and offers by us, or persons we have an association with, please contact us.

COMPLAINTS – INTERNAL AND EXTERNAL COMPLAINTS PROCEDURE

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 Arch Underwriting at Lloyd's (Australia) Pty Ltd in the first instance:

*The Complaints Manager,
Arch Underwriting at Lloyd's (Australia) Pty Ltd,
Level 10 155 Clarence Street
Sydney, NSW, 2000
or telephoning **Us** at (02) 8284 8400
or emailing **Us** at complaints@archinsurance.com.au*

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: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000*

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**.