

AXIS UNDERWRITING SERVICES PTY LTD

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MANAGEMENT LIABILITY POLICY

LLOYD'S CERTIFICATE OF INSURANCE

effected through AXIS UNDERWRITING SERVICES Pty Ltd (hereinafter called the Coverholder)

This Certificate of Insurance confirms that in return for payment of the Premium shown in the Schedule, certain Underwriters at Lloyd's have agreed to Indemnify the Insured, in accordance with the wording attached to the Certificate.

You or Your representative can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the underwriters at Lloyd's is liable by requesting them from the Coverholder. In the event of loss, each Underwriter (and their executors and administrators) is only liable for their own share of the loss.

In accepting this insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form the date of which is stated in the Schedule. You should read this Certificate, Schedule and policy wording carefully and if it is not correct contact Your Broker or Axis Underwriting Services Pty Ltd. It is an important document and You should keep it in a safe place with all other papers relating to this insurance.

The Underwriters accepting this insurance agree that;

- (i) if a dispute arises under this insurance it will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters General Representative in Australia

Suite 2, Level 21 Angel Place
123 Pitt Street
Sydney NSW 2000

- (iii) who has authority to accept service and to appear on the Underwriters' behalf;
- (iii) if a suit is instituted against any of the Underwriters all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance IMMEDIATE NOTICE should be given to AXIS UNDERWRITING SERVICES Pty Ltd.

The Certificate is issued by the Coverholder in accordance with the authority granted to them by certain Underwriters at Lloyd's under the Agreement referred to in the Certificate.

MANAGEMENT LIABILITY INSURANCE

INSURANCE AGREEMENT - FORM DOAUSTBIND

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

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

1) INSURING CLAUSES

- a) **Directors’ and Officers’ Liability**
pay on behalf of any *Director* or *Officer Loss* (other than *Loss* payable under any other Insuring Clause) arising from any *Claim* first made against them during the *Period of Insurance* and notified to the *Underwriters* during the *Period of Insurance* for any *Wrongful Act* committed by them in the capacity as a *Director* or *Officer*;
- b) **Company Reimbursement**
pay on behalf of the *Company Loss* arising from any *Claim* first made against any *Director* or *Officer* during the *Period of Insurance* and notified to the *Underwriters* during the *Period of Insurance* for any *Wrongful Act* committed by them in the capacity as a *Director* or *Officer*;
- c) **Employment Entity Liability** (This Insuring Clause will only be effective if shown as “Applicable” in Item 6 (a) of the *Schedule*)
pay on behalf of the *Company Loss* (other than *Loss* payable under any other Insuring Clause) arising from any *Claim* (other than any *United States Claim*) first made against the *Company* during the *Period of Insurance* and notified to the *Underwriters* during the *Period of Insurance* for any *Employment Wrongful Act* committed by the *Company*;
- d) **Entity Cover** (This Insuring Clause will only be effective if shown as “Applicable” in Item 6 (b) of the *Schedule*)
pay on behalf of the *Company Defence Costs* (other than *Defence Costs* payable under any other Insuring Clause) which the *Company* are legally liable to pay as a result of a *Claim* (other than any *United States Claim*) first made against the *Company* during the *Period of Insurance* and notified to the *Underwriters* during the *Period of Insurance* alleging a *Wrongful Act* committed by the *Company*;
- e) **Fiduciary Liability** (This Insuring Clause will only be effective if shown as “Applicable” in Item 6 (c) of the *Schedule*)
pay on behalf of the *Directors* and *Officers* and the *Company Loss* (other than *Loss* payable under any other Insuring Clause) for which any or all of the *Directors* and *Officers* and the *Company* are legally liable to pay as a result of a *Claim* (other than any *United States Claim*) first made against one or more of them during the *Period of Insurance* and notified to the *Underwriters* during the *Period of Insurance* alleging a *Fiduciary Wrongful Act* committed by one or more of them.

2) DEFINITIONS

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

- a) **Benefit Program** means any employee benefit plan or registered pension plan or group sickness or accident insurance plan or private health services plan or supplementary unemployment benefit plan or profit-sharing plan or sickness or accident or disability plan or income maintenance insurance plan or vacation pay trust or employee trust or retirement compensation arrangement or salary deferral arrangement (other than any incorporated or registered or domiciled in the *United States of America* or established for the exclusive benefit of natural persons who are resident in, or are citizens of, the *United States of America*) as defined within the laws of Australia and both created and *Managed* by the *Company* for the benefit of the *Directors* and *Officers* or the *Employees* or both.
- b) **Claim** means:
- i) a written notice received by a *Director* or *Officer* (or the *Company* in the case of Insuring Clauses c), d) or e) if applicable) for a demand for compensation or other relief from any party in respect of any actual or alleged *Wrongful Act* or *Employment Wrongful Act* or *Fiduciary Wrongful Act*;
 - ii) an *Inquiry* which is evidenced by a notice requiring the *Director* or *Officer* to attend which is first served during the *Period of Insurance*.
- c) **Company** means: the *Parent Company* and any *Subsidiary*.
- d) **Defence Costs** means:
- i) costs and charges and expenses incurred in the response to a *Claim* with the prior and written consent of the *Underwriters* (such consent not to be unreasonably withheld);
 - ii) the premium paid for financial or insurance instruments or bonds which are requested in order to institute an appeal to an award of civil damages against a *Director* or *Officer* (but not any obligation to procure or provide such instruments or bonds).
- Defence Costs* does not mean salaries, wages, travel or accommodation expenses.
- e) **Director** and **Officer** means:
- i) any natural person who was, or is, or becomes a director or officer of the *Company* or a trustee of a *Benefit Program*,
 - ii) any *Employee* of the *Company* only if and to the extent a *Claim* is made against him or her for a *Wrongful Act* when named as co-defendant with a *Director* or *Officer*;
 - iii) any *Employee* while acting in a managerial capacity with the *Company* or who is deemed to be performing any activity normally carried out by a *Director* or *Officer*;
 - iv) any *Employee* in respect of an *Employment Wrongful Act*;
 - v) any natural person who was, or is, or becomes a non-executive director of the *Company* as defined according to applicable law,
 - vi) where the *Company* or *Outside Company* is a charity or a trade association or any other such entity which is not-for-profit and has no issued share capital, any natural person who was, or is, or becomes a trustee or committee member of the *Company*;
 - vii) any spouse or domestic partner or civil partner of any natural person who falls within the ambit of Definitions e) i), ii), iii), iv), v) or vi) above, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse or domestic partner or civil partner arising from a *Claim* insured against under this *Insurance*;

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

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

f) **Employee** means:

- i) any natural person who was, or is, or may hereafter be acting under a contract of service or apprenticeship with the **Company**;
- ii) where the **Company** is a charity or a trade association or any other such entity which is not-for-profit and has no issued share capital, any natural person who was, or is, or may hereafter be a volunteer of the **Company**;

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

g) **Employment Wrongful Act** means any actual or alleged:

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

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

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

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

j) **Loss** means:

- i) such sums which the **Directors** or **Officers** (or the **Company** in the case of Insuring Clauses c) or e)) are legally liable to pay as compensatory damages for any **Wrongful Act**;
- ii) punitive or exemplary damages awarded in a court of law;
- iii) **Defence Costs**.

Loss does not mean:

- i) taxes, salaries, wages, benefits, remuneration, sums payable pursuant to a financial support direction or contribution notice issued by any pension authority;
- ii) damages constituting the multiplication of a lesser damages sum;

- iii) any amount deemed uninsurable under law;
 - iv) the expenses of any *Directors* or *Officers* or the *Company*;
 - v) in the case of Insuring Clauses c) or d), any compensation payable in respect of statutory or contractual notice periods or costs incurred in any employment-related education programme or any liability or costs incurred in the modification of any building with the objective of making it more accessible or more accommodating to any disabled person;
 - vi) in the case of Definitions j) ii) or iii), any liabilities or damages awarded as, or part of, a *United States Claim*;
 - vii) fines or penalties, other than as specified in Extension i).
- k) **Managed** means the handling of records or the enrolment or termination or cancellation of the involvement of any *Employee*.
- l) **Not For Profit Entity** means any registered charity, corporation without share-capital or trade association which is incorporated on a not-for-profit basis and is not incorporated or domiciled or licensed or registered in the *United States of America*.
- m) **Outside Company** means any:
- i) *Company* which the *Underwriters* have specifically agreed in writing to include within this definition;
 - ii) *Not For Profit Entity*.
- n) **Parent Company** means the *Company* named in Item 1 of the *Schedule*.
- o) **Period of Insurance** means the period shown in Item 2 of the *Schedule* and, if applicable, the periods referred to Extensions c) and d).
- p) **Insurance** means this wording and the *Schedule* and all endorsements appended hereto.
- q) **Pollution** means any actual or alleged or threatened discharge or release or escape or dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a *Director* or *Officer* or the *Company* test for or monitor or clean up or remove or contain or treat or detoxify or neutralise any pollutants.
- r) **Proposal Form** means the written proposal for this *Insurance* and any policy of which this *Insurance* is a renewal as submitted to and accepted by the *Underwriters* and any written information submitted to and accepted by the *Underwriters* in connection with this *Insurance*, all of which shall be deemed to form part of this *Insurance*. The **Proposal Form** shall be the basis of this contract of insurance and (with regard to the answers and declarations and statements and content thereof) shall be construed as a separate application for insurance by each *Director* or *Officer*.
- s) **Schedule** means the document so-entitled which is appended to this *Insurance*.
- t) **Subsidiary** means any company in which the *Company* either directly or indirectly:
- i) holds the majority of the voting rights; or
 - ii) holds more than half of the issued share capital; or
 - iii) has the right to remove or to appoint a majority of the board of directors.

Subsidiary also means:

- i) any company which the **Company** or any **Subsidiary** acquires or creates during the **Period of Insurance**, other than (unless specifically accepted by the **Underwriters** in writing) any company that:
 - 1) has total assets that exceed the sum stated in Item 10 of the **Schedule**; or
 - 2) has its securities listed on any exchange in the **United States of America**; or
 - 3) once acquired or created, does not fall within one or more of Definitions t) i) to iii) inclusive;
- ii) any internal group of natural persons who are appointed by the **Directors** or **Officers** to review and report upon a particular aspect of **Company** governance and operation and report with findings and conclusions to the **Directors** or **Officers**, but who otherwise exercise no operative control over the **Company** nor have any power to bind;
- iii) any internal committee or division established by, and operating within the ambit of, the **Company**.
- u) **Underwriters** mean certain Lloyd's Underwriters and any other participating insurance companies.
- v) **United States of America** means the United States of America and its respective states, localities, overseas territories and possessions.
- w) **United States Claim** means any:
 - i) **Claim** brought in the jurisdiction and courts of the **United States of America**; or
 - ii) actual or attempted enforcement or upholding against the **Directors** or **Officers** or the **Company** by any court or arbitrator or tribunal outside the **United States of America** of any damages or compensatory or monetary awards or judgments or orders or settlements or costs or expenses made within the **United States of America**; or
 - iii) **Claim** brought as a consequence of the operations of any **Outside Company** in the **United States of America**.
- x) **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission, neglect, libel, slander, breach of duty, breach of trust or breach of warranty of authority by the **Directors** or **Officers** in the discharge of their duties as **Directors** or **Officers** or any matter claimed against them solely by reason of their being **Directors** or **Officers** of the **Company**.

With respect to Insuring Clauses a) and b) **Wrongful Act** also means **Employment Wrongful Act**.

With respect to Insuring Clauses d) and e) **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, omission neglect or breach of duty by the **Company**.

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

3) LIMITS AND RETENTIONS

- a) The *Underwriters'* aggregate limit of liability for all *Loss* in respect of all *Claims* shall be the amount specified in Item 3 of the *Schedule*, but in the event that the amount specified in Item 3 of the *Schedule* is exhausted, then it shall be reinstated once for the benefit only of non-executive directors to an aggregate amount equal to 25 percent of the amount specified in Item 3 of the *Schedule* or AUD 2,000,000 (whichever is the smaller).
- b) If stated in Item 4 of the *Schedule* to be applicable an aggregate limit of AUD 1,000,000 or the amount specified in Item 3 of the *Schedule* (whichever is the smaller) shall apply to *Claims* under Extension b). This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the *Schedule*.
- c) An aggregate limit of liability of AUD 2,000,000 or the amount specified in Item 3 of the *Schedule* (whichever is the smaller) shall apply to *Claims* under Insuring Clauses c), d) and e) if applicable. This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the *Schedule*.
- d) The *Underwriters* shall only be liable for the amount of *Loss* in respect of each *Claim* which is in excess of the applicable retention amount specified Item 5 of the *Schedule* or elsewhere in this *Insurance*.
- e) In the event that the *Underwriters* are liable for *Loss* under two or more Insuring Clauses then, notwithstanding anything stated in this *Insurance* to the contrary, only the largest of all applicable retentions shall be applied. The provisions of this clause e) will not apply if such *Loss* partially falls under Insuring Clause a), in which event all applicable retentions will apply.
- f) All *Claims* or series of *Claims* or *Loss* or series of *Losses* arising from or attributable to or which are causally connected with a single *Wrongful Act* or a single *Employment Wrongful Act* or a single *Fiduciary Wrongful Act* or a series of related *Wrongful Acts* or a series of related *Employment Wrongful Acts* or a series of related *Fiduciary Wrongful Acts* which are causally connected shall be considered as a single *Claim*.
- g) For the purposes of determining the limit of liability this *Insurance* will be construed as a joint policy with an aggregate limit available to all *Directors* and *Officers* and the *Company* collectively.

4) EXTENSIONS

a) **Outside Board**

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

- i) such request or order or direction has been given by the *Company* in writing;
- ii) any cover under this extension shall only apply in excess of any other insurance or indemnification available to the *Directors* or *Officers*;
- iii) *Underwriters* shall not be liable to make any payment for *Loss* in connection with any *Claim* made against a *Director* or *Officer* by or on behalf of the *Outside Company*;

- iv) in the case of any *Outside Company* which falls within the ambit of Definition m) i), the *Underwriters* agreement to any *Outside Company* coverages must be specifically obtained in writing;
- v) if any other insurance is provided by the *Underwriters* under any other contract of insurance, then the total aggregate limit of liability for all *Loss* covered by virtue of this extension shall be reduced by the limit of liability of such other contract of insurance;
- vi) no coverage is provided under this Extension for *Loss* arising from any *Claim* based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any insolvency or bankruptcy or liquidation or receivership or administration of any *Outside Company* other than a *Not For Profit Entity*.

b) **Pollution Defence Costs**

Underwriters will pay *Defence Costs* on behalf of any *Director* or *Officer* (if it is stated in Item 4 of the *Schedule* that this extension is applicable) incurred in defending themselves against criminal or regulatory proceedings in respect of *Pollution*, where the incident giving rise to the *Claim* occurs outside of the *United States of America* and is not a *United States Claim* and which results from any *Wrongful Act* giving rise to a *Claim*.

c) **Discovery Period**

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

d) **Retired Directors and Officers**

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

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

Extension c) shall terminate 12 months after the expiry of the *Period of Insurance*.

Extension d) shall terminate 72 months after the expiry of the *Period of Insurance*.

Extensions c) and d) shall be deleted and of no effect:

- i) if this *Insurance* is succeeded or replaced by any other insurance policy;
- ii) if at renewal the *Underwriters* offer terms or conditions or limits of liability or request premium even if any or all of them are different from those of the expiring Policy;
- iii) unless the *Underwriters* receive an additional premium equal to fifty percent (50%) of the premium specified in Item 11 of the *Schedule* within 30 days after the expiry of the *Period of Insurance* if the *Underwriters* cancel or refuse to renew the expiring Policy;

- iv) unless the *Underwriters* receive an additional premium equal to seventy five percent (75%) of the premium specified in Item 11 of the *Schedule* within 30 days after the expiry of the *Period of Insurance* if the *Company* cancels does not renew the expiring Policy;
- v) unless a written request to invoke either extension is received by the *Underwriters* within 15 days after the expiry of the *Period of Insurance*;
- vi) if this *Insurance* is terminated by the *Underwriters* for non payment of premium;
- vii) in respect of any *Wrongful Act* taking place after the expiry of the *Period of Insurance*.

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

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

Extensions a), b), c) and d) shall be deleted and of no effect in respect of all insuring clauses except Insuring Clauses a) and b).

Extensions a), b), c) and d) shall not be construed to mean an increase or an extension or a reinstatement of the limit of liability specified in Item 3 of the *Schedule*.

e) **Inquiry Costs**

Underwriters will pay *Defence Costs* on behalf of any *Director* or *Officer*, subject to an aggregate sub-limit of AUD 500,000 (or the limit specified in Item 3 of the *Schedule*, whichever is the smaller), in preparing for and attending an *Inquiry*.

f) **Occupational Health and Safety Costs**

Underwriters will pay *Defence Costs* on behalf of any *Director* or *Officer*, subject to an aggregate sub-limit of AUD 500,000 (or the limit specified in Item 3 of the *Schedule*, whichever is the smaller) (such limit being part of and not in addition to the aggregate limit of indemnity under this *Insurance* specified in Item 3 of the *Schedule*), incurred in defending themselves against criminal or regulatory proceedings in respect of any actual or alleged breach of any occupational health and safety laws or regulations which result from any *Wrongful Act* giving rise to a *Claim* other than any incurred in the *United States of America* or any *United States Claim* or any civil claim for compensation or any proceeding or civil claim for damages or compensation arising from that breach or any other *Claim* otherwise excluded under this *Insurance*.

g) **Public Relations Costs**

Underwriters will, subject to their prior written consent, pay on behalf of any *Director* or *Officer* all costs and fees and expenses which are reasonably necessary to reduce any damage to reputation suffered by the *Director* or *Officer* or the *Company* which arises out of information publicly accessible by third parties via the media and is a direct result of a *Claim*, subject to an aggregate sub-limit of AUD 250,000 (or the limit specified in Item 3 of the *Schedule*, whichever is the smaller) (such limit being part of and not in addition to the aggregate limit of indemnity under this *Insurance* specified in Item 3 of the *Schedule*).

h) **Assets and Liberty Costs**

Underwriters will, subject to their prior written consent, pay where permitted by law, subject to a maximum amount in respect of any one *Claim* which shall not exceed AUD 25,000 and a maximum amount in respect of all *Claims* which shall not exceed AUD 50,000 (such limits being part of and not in addition to the aggregate limit of indemnity under this *Insurance* specified in Item 3 of the *Schedule*), the prosecution costs of each *Director and Officer* to

obtain the discharge or revocation of a judicial order entered during the *Period of Insurance* imposing:

- i) a confiscation or suspension or freezing of rights of ownership of real property or personal assets of such *Director or Officer*;
- ii) a charge over real property or personal assets of such *Director or Officer*;
- iii) a temporary or permanent prohibition on such *Director or Officer* from holding the office, or performing the function, of a director or officer;
- iv) the restriction of the liberty of such *Director of Officer* to a specified domestic residence or an official detention;
- v) the deportation of a *Director or Officer* following the revocation of otherwise proper and current and valid immigration status for any reason other than the conviction of such *Director or Officer* of a crime;
- vi) the extradition of a *Director or Officer*.

i) **Civil Fines and Civil Penalties**

Underwriters will, subject to their prior written consent, pay on behalf of the *Directors and Officers*, subject to a maximum amount in respect of any one *Claim* which shall not exceed AUD 5,000 and a maximum amount in respect of all *Claims* which shall not exceed AUD 25,000 (such limits being part of and not in addition to the aggregate limit of indemnity under this *Insurance* specified in Item 3 of the *Schedule*), if and to the extent allowed by law, civil fines and civil penalties which the *Directors* and *Officers* are ordered to pay by law as a result of any *Wrongful Act* giving rise to a *Claim*, other than those (i) which are otherwise recoverable from or payable by the *Company*; or (ii) it is proven are against public policy or in breach of the laws or rules or regulations to which the *Underwriters* or the *Directors* or *Officers* or the *Company* are subject, to pay; or (iii) are incurred or imposed in the *United States of America*; or (iv) are *United States Claims*.

j) **Advancement of Defence Costs**

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

5) **EXCLUSIONS**

The *Underwriters* shall not be liable for *Loss* in connection with any *Claim*:

- a) based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with, any:
 - i) legal or administrative or disciplinary or regulatory proceedings which existed or were pending at the date stated in Item 7 of the *Schedule*, or any fact or circumstance or event in any way pertaining to such proceedings;
 - ii)
 - 1) *Director* or *Officer* gaining any personal profit or advantage or receiving any remuneration to which he or she was not or is not legally entitled;
 - 2) *Director* or *Officer* committing any dishonest or fraudulent act or omission or any wilful violation of law;

provided that this exclusion shall only apply if such profit or advantage or remuneration or act or omission is established by admission or by a court or a tribunal;

- iii) circumstance notified or *Claim* made under any insurance which was in force prior to the *Period of Insurance* or circumstance or *Claim* which was known about by any of the *Directors* or *Officers* or the *Company* prior to the *Period of Insurance*;
- iv) actual or alleged violation of the Securities Act 1933 or the Securities Exchange Act of 1934, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the *United States of America*;
- v) actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the *United States of America*;
- vi) pensions or pension plans or pension trusts or pension programmes or employee benefit plan (other than those which fall within the ambit of Insuring Clause e));
- vii) *Pollution* other than:
 - 1) to the extent covered under 4. Extension b); or
 - 2) any *Claim* brought by a shareholder of the *Company* (other than a *Director* or *Officer*) on the basis solely that *Pollution* has caused a loss in the value of the share capital of the *Company* due to a breach of duty owed by the *Directors* and *Officers*;
- viii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- ix) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;
- x) Terrorism (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft);

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

- xi) offering of securities of the *Company*;
- xii) breach of professional duty or professional services provided by or on behalf of the *Directors* and/or *Officers* and/or the *Company* to a third party;

For the avoidance of doubt, this exclusion shall not apply to any *Claim* against any *Directors* or *Officers* alleging failure to supervise in their directorial or executive capacity.

- xiii) (if stated in Item 6 (d) of the *Schedule* to be applicable to this *Insurance*) *United States Claim*;

- xiv) in respect of Insuring Clauses c) and d):
 - 1) actual or alleged breach of legislation relating to collective redundancies;
 - 2) regulations relating to minimum wage regulations or disability benefits, unemployment benefits, retirement benefits, social security benefits, redundancy benefits, compensation or unemployment insurance;
 - 3) order or judgment to reinstate any *Employee*;
 - 4) actual or alleged liability under any express employment contract or agreement, other than any liability which the *Company* would face in the absence of such a contract or agreement.

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

- c) made:
 - i) in respect of all Insuring Clauses except a) and b), by or on behalf of the *Company* or by or on behalf of any *Director* or *Officer*;
 - ii) (if stated in Item 6 (e) of the *Schedule* to be applicable to this *Insurance*) (in the name of the *Company* or not) or instigated by or on behalf of, or for the benefit of, any person or entity holding beneficially or otherwise more than the percentage of the issued share capital of the *Company* stated in Item 6 (f) of the *Schedule*;
 - iii) (in respect of Insuring Clauses d) or e)) or based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, or in any way involving, or in connection with any:
 - 1) *Wrongful Act* committed or alleged to have been committed prior to the inception date of this *Insurance* as set forth in Item 2 of the *Schedule*;
 - 2) liability under any written or oral agreement of contract, unless such liability would still be applicable in the absence of such agreement or contract;
 - 3) actual or alleged liability under any law in respect of any workers' compensation including, but not limited to, employment or unemployment or disability or pension or medical or social security benefits;
 - 4) actual or alleged intentional failure of the *Directors* or *Officers* or the *Company* to comply with any law or regulation or ruling;
 - 5) actual or alleged failure to collect any employer's contributions, unless such failure is as a consequence of any negligence by or on behalf of any *Director* or *Officer* or the *Company*;
 - iv) (in respect of Insuring Clause d)) or based upon, arising out of, arising from, directly or indirectly resulting from, attributable to, or in any way involving, or in connection with any actual or alleged violation of any law or regulation or by-law which regulates or restricts anti-trust or monopolistic behaviour or practices, price fixing,

price discrimination, predatory behaviour or restraint of trade, or which protects competition;

- v) or based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with any *Wrongful Act* committed on or prior to the date stated in Item 8 of the *Schedule*.

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

6) CLAIMS CONDITIONS

It is a condition precedent to the liability of the *Underwriters* that:

- a) notice of any *Claim* be given to the *Underwriters* as soon as is reasonably practicable and in any event within 30 days of the end of the *Period of Insurance* and that notice of a *Claim* be given in writing by post or by facsimile to the address specified in Item 9 of the *Schedule* and shall include full details including, but not limited to, dates, locations and the names of persons involved;
- b) in the event of a *Director* or *Officer* or the *Company* becoming aware of any circumstance which might reasonably be expected to give rise to a *Claim* the *Underwriters* shall be given notice of same in the manner specified in 6. Claims Conditions a) as well as reasons as to why it is considered to be a circumstance which might reasonably be expected to give rise to a *Claim* and any *Claim* subsequently made which arises from such circumstance shall be deemed to have been reported to the *Underwriters* on the date when such circumstance was first notified to them;
- c) at their own cost the *Directors* or *Officers* and the *Company* shall provide to the *Underwriters* in a timely fashion all information and assistance they reasonably require to allow them to investigate, defend, or resolve any *Claim* and to exercise any subrogation rights;
- d) the *Underwriters* have the right but not the obligation to control the defence and settlement of any *Claim* and the appointment of lawyers to represent the *Directors* and *Officers* or the *Company*;
- e) the *Directors* or *Officers* and the *Company* shall furnish the *Underwriters* in a timely fashion with copies of all papers in connection with any *Claim* or circumstance notified;
- f) the *Directors* or *Officers* or the *Company* shall not make any admission or give any offer or settlement or promise or indemnity to any party without the prior and written consent of the *Underwriters*;
- g) no *Director* or *Officer* nor the *Company* shall be required to contest any *Claim* at trial unless mutually agreed legal Counsel shall advise that the *Claim* should be contested;
- h) *Defence Costs* which are advanced on behalf of the *Directors* or *Officers* or the *Company* prior to the resolution of a *Claim* shall be repayable by the *Directors* or *Officers* or the *Company* to the *Underwriters* in the event that the *Claim* is not covered under this *Insurance*;
- i) if a *Director* or *Officer* or the *Company* refuses to consent to any settlement recommended by the *Underwriters* or their legal representatives and elects to contest or to continue defence of a *Claim*, then the liability of the *Underwriters* for such *Claim* shall not exceed the amount for which the *Claim* could have been settled up to the date of such refusal;
- j) in the event that any *Claim* under this *Insurance* gives rise both to *Loss* which is covered under this *Policy* and losses which are not so covered, or includes a *Claim* against a *Director* or *Officer* and a *Claim* against the *Company*, the *Underwriters* and the *Company* and the *Directors* or *Officers* shall negotiate in good faith to agree a fair and proper basis for

allocation taking into consideration the relative legal exposures of the various parties and that in the event that the *Underwriters* and the *Company* and/or the *Directors* or *Officers* cannot agree on allocation they shall submit the dispute to a mutually agreed upon legal counsel to determine an expeditious and fair and proper basis for allocation having regard to the relative legal exposures of the various parties;

- k) if the *Directors* and *Officers* are unable to satisfy a right to payment or indemnity against the *Company* for *Loss* arising out of a *Claim* solely by reason of the insolvency of the *Company* then the *Underwriters* will provide such payment or indemnity against *Loss* to the extent that the *Company* could have granted it as legally permitted or required by law in the absence of such insolvency;
- l) in the event of *Loss* arising from a *Claim* for which payment is due under the provisions of this *Insurance*, then the *Underwriters* shall in all events first pay *Loss* for which coverage is to be provided to any *Director* and/or *Officer*; and only after payment of *Loss* has been made to such *Directors* and *Officers* with respect to whatever remaining amount of the *Limit of Liability* is available after such payment for such other *Loss* for which coverage is provided under this *Insurance*;
- m) all rights of recovery of the *Directors* or *Officers* or the *Company* shall be protected and maintained and subrogated to the *Underwriters* if the *Underwriters* make any payment under this *Insurance*.

7) GENERAL CONDITIONS

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

b) Policy Construction

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

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

- i) any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;

- ii) if a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
 - 1) a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
 - 2) referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
 - a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
 - (b) will act as an expert and not as an arbitrator;
 - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
 - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

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

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

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

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

- iv) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under this *Insurance* while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.

- v) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under this *Insurance*.
- vi) Notwithstanding anything herein, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with this *Insurance* where the party seeks urgent interlocutory relief.

c) **Cancellation**

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

d) **Assignment**

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

e) **Takeover or Merger**

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

INSURER'S LIABILITY SEVERAL NOT JOINT

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

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

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

PROPORTION OF LIABILITY

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

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

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