

DIRECTORS AND OFFICERS LIABILITY INSURANCE

Standard

Nova Underwriting Pty Ltd
ABN 42 127 786 123 / AFSL 324767

1.0 INSURING CLAUSES

DIRECTORS and OFFICERS

- 1.1 **We** will cover the **Insured Persons** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Management Act**, unless the **Company** is providing them with **Indemnification** for such **Loss**.

COMPANY REIMBURSEMENT

- 1.2 **We** will cover the **Company** for payments it is permitted or required by law to make on behalf of the **Insured Persons** through **Indemnification** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Management Act**.

2.0 AUTOMATIC EXTENSIONS

These extensions are included automatically and each is subject to the terms of the policy except where varied by the extension. Except for Automatic Extension 2.16, their inclusion does not increase the **Sum Insured** :

OUTSIDE DIRECTORSHIPS

- 2.1 An **Insured Person** includes a person serving [at the direction or request of the **Company**] as a director or officer, trustee, governor or equivalent position of an **Outside Entity**, unless:
- 2.1.1 the **Outside Entity** is providing **Indemnification** for such **Loss**; or
- 2.1.2 such **Loss** is covered under another policy of insurance, and in which case the cover for such **Loss** under this policy shall be in excess of that other insurance.

EXCEPT as provided under Automatic Extension 2.14 [INSURED vs INSURED], **We** will not cover **Loss** arising from any **Claim** made against an **Insured Person** by or on behalf of the **Outside Entity**.

POLLUTION

- 2.2 Exclusion 4.9 [POLLUTION] will not apply to:
- 2.2.1 any **Claim** made against an **Insured Person** by a shareholder of the **Company**.
- 2.2.2 **Defence Costs** for **Claims** not included under 2.2.1 above, but only if:
- the **Management Act** was not committed in **USA** or **Canada**; and
 - **Our** liability to pay **Defence Costs** is limited to the sum stated in Item [D] of the **Schedule**.
- 2.2.3 **Defence Costs** payable under Automatic Extension 2.11 [INQUIRIES].

RETIRED DIRECTORS, OFFICERS and TRUSTEES – RUN OFF COVER

- 2.3 **We** will cover retired **Insured Persons** for **Loss** arising from any **Claim** first made against them and reported to **Us** within 84 months after the **Insurance Period** has expired , but only if:
- 2.3.1 this policy is not renewed or replaced with similar insurance.
 - 2.3.2 the **Insured Persons** do not purchase an extended reporting period under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD].
 - 2.3.3 the **Management Act** was committed before the **Insurance Period** expired, and before any merger, consolidation, takeover or acquisition occurred.

EXTENDED REPORTING PERIOD

- 2.4 **We** will cover the **Insured Persons** for **Loss** arising from any **Claim** first made against them and reported to **Us** within 12 months after the **Insurance Period** has expired, but only if :
- 2.4.1 this policy is not renewed or replaced with similar insurance; and
 - 2.4.2 the **Management Act** was committed before the **Insurance Period** expired and before any merger, consolidation, takeover or acquisition occurred; and
 - 2.4.3 the **Insured Persons** advise **Us** during the **Insurance Period** that they elect to purchase this extension, and agree to pay **Us** an additional premium of 100% of the premium applicable for that **Insurance Period** within 30 days of its expiry.

SPOUSE COVER

- 2.5 Any **Claim** brought against any **Insured Person's** lawful spouse arising from a **Management Act** committed by that **Insured Person** , will be covered by this policy to the same extent as if the **Claim** had been brought against the **Insured Person**.

ESTATES, HEIRS and LEGAL REPRESENTATIVES

- 2.6 Any **Claim** brought against any **Insured Person's** estate, heirs or legal representatives following the death, incapacity or bankruptcy of that **Insured Person**, will be covered by this policy to the same extent as if the **Claim** had been brought against the **Insured Person**.

INDEMNITY PRESERVATION

- 2.7 If the **Company** is permitted or required by law to provide **Indemnification** to any **Insured Person** for **Loss** arising from a **Claim** but fails to do so, then **We** will pay such **Loss** on behalf of the **Insured Person** . If **We** do this, the **Company** will be liable to reimburse **Us** for such payments up to the amount of any **Excess** applicable to Insuring Clause 1.2.

OCCUPATIONAL HEALTH and SAFETY

- 2.8 Exclusions 4.5 [BODILY INJURY] and 4.8 [INSURED vs INSURED] will not apply to **Defence Costs** for any **Claim** arising from a breach of occupational health and safety laws.

SEVERABILITY and NON-IMPUTATION

- 2.9 For the purposes of determining any **Insured Person's** entitlement to cover under this policy, the proposal will be construed as a separate application for cover by each **Insured Person**, and the knowledge of one **Insured Person** will not be imputed to another **Insured Person** . If any **Insured Person** fails to comply with the terms or conditions of this policy, such failure will not jeopardise cover to another **Insured Person** who has complied with them.

ADVANCEMENT OF DEFENCE COSTS

- 2.10 If **We** elect not to take over and conduct the defence or settlement of any **Claim**, and subject to any **Excess**, **We** will pay all reasonable **Defence Costs** associated with that **Claim** as and when they are incurred, but only if **We** have not denied cover for the **Claim**. **We** reserve the right to recover any **Defence Costs** paid under this extension from the **Insured Person** or the **Company** [according to their respective interests] in the event and to the extent that it is subsequently established by judgment or other final adjudication, that there was no entitlement to cover under this policy.

INQUIRIES

- 2.11 We will pay **Defence Costs** incurred by any **Insured Person** in attending any official investigation, examination, inquiry or other proceedings relating to the affairs of the **Company**, but only if:
- notice to attend the proceedings was first received by the **Insured Person** and reported to **Us** during the **Insurance Period**.
 - **Our** liability to pay **Defence Costs** is limited to the **Sum Insured**.

PECUNIARY PENALTIES

- 2.12 Despite Definition 7.8, **Loss** includes, to the extent permitted by law, pecuniary penalties imposed upon any **Insured Person** under Australian or New Zealand statutes. **Our** liability to pay such pecuniary penalties is limited to the sum stated in Item [E] of the Schedule.

SUBSIDIARIES – NEW/OLD/RUN-OFF

- 2.13 Subject to Conditions 5.7 [ACQUISITIONS] and 5.9 [AUTHORISATION], the **Company** includes any **Subsidiary**, but only for **Insured Acts** committed while the company was a **Subsidiary**.

INSURED vs INSURED

- 2.14 **We** will cover **Defence Costs** arising from a **Claim** by one **Insured Person** or the **Company** against another **Insured Person**. **We** will also cover **Loss** arising from a **Claim** against any **Insured Person** :
- 2.14.1 by another **Insured Person** for contribution or indemnity, but only if the **Claim** arises from another **Claim** covered by this policy.
- 2.14.2 by the **Company** as a statutory derivative action, but only if the **Claim** is not solicited or voluntarily assisted by another **Insured Person**.
- 2.14.3 by a liquidator, administrator or receiver or equivalent in any jurisdiction, including an action brought in the name of the **Company** by those parties, but only if the **Claim** is not solicited or voluntarily assisted by another **Insured Person**.
- 2.14.4 by the **Company** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.
- 2.14.5 arising from an **Employment Act**.
- 2.14.6 who is a former **Insured Person**.
- 2.14.7 where that **Claim** is being made by a former **Insured Person**.

For the purposes only of this extension, the **Company** includes any **Outside Entity**.

AUTOMATIC REINSTATEMENT for NON-EXECUTIVE DIRECTORS

- 2.15 If the **Sum Insured** is exhausted by **Loss** arising from **Claims** against the **Insured Persons** AND the limits of liability of all policies operating expressly in excess of this policy are similarly exhausted, then those **Insured Persons** who are non-executive directors shall have the benefit of a reinstatement of the **Sum Insured**, but this reinstatement will not apply to any existing **Claim** or to any **Claim** arising from **Management Acts** already reported to **Us** or other insurers.

3.0 OPTIONAL EXTENSIONS

These extensions are optional and are not included unless recorded in Items [I] and/or [J] respectively of the Schedule as being included. Each extension is subject to the terms of the policy except where varied by the extension, and except for Optional Extension 3.1, their inclusion does not increase the **Sum Insured**:

3.1 ONE AUTOMATIC REINSTATEMENT

If **We** have made **Loss** payments equivalent to the **Sum Insured**, **We** will reinstate the **Sum Insured** [LESS any amounts reinstated under Automatic Extension 2.15], but this reinstatement will not apply to any existing **Claim** or to any **Claim** arising from **Management Acts** already reported to **Us** or other insurers [or their agents].

3.2 ENTITY EPL COVER

We will cover the **Company** for **Loss** arising from any **Claim** first made against the **Company** and reported to **Us** during the **Insurance Period** arising from any **Employment Act** EXCEPT where such **Loss** arises from:

- specific obligations imposed under any contract of employment, employment agreement, statute, award or otherwise; or
- a contract of employment or employment agreement alleged to be unfair, including the seeking of relief pursuant to Section 106 of the Industrial Relations Act [NSW] 1996 or Section 276 of the Industrial Relations Act [Queensland] or similar legislation in other jurisdictions.

4.0 EXCLUSIONS

We will not cover **Loss** arising from any **Claim**:

4.1 ASBESTOS

arising from asbestos.

PERSONAL PROFIT and CONDUCT

4.2 arising from:

- 4.2.1 the **Insured Persons** gaining any personal profit or advantage or receiving any remuneration to which they were not legally entitled; or
- 4.2.2 the **Insured Persons** committing any act or omission which is malicious, dishonest, fraudulent or in wilful violation of the law;

BUT this exclusion will only apply if there is an admission, or a court, tribunal, or regulator finds that the **Insured Persons** acted in the manner described in 4.2.1 and 4.2.2.

KNOWN CLAIMS or CIRCUMSTANCES

- 4.3 arising out of any fact, event, circumstance or **Management Act** notified, or claim made, under any policy prior to the **Insurance Period**, or which was known [or ought reasonably to have been known] about by any **Insured Person** or the **Company** prior to the **Insurance Period**.

PROPERTY

- 4.4 for damage to, or destruction of, or loss of use of, tangible property.

BODILY INJURY

- 4.5 for bodily injury, sickness, disease, emotional distress, mental injury or anguish, or death of any person, but this exclusion will not apply to any **Claim** for emotional distress or mental anguish arising from an **Employment Act**.

USA – SECURITIES LEGISLATION

- 4.6 arising from a violation [or alleged violation] of the Securities Act 1933 [USA] or the Securities Exchange Act of 1934 [USA], including any amendment or re-enactment of those Acts, or any similar provisions in any state statutory law enacted in **USA**.

4.7 USA - ERISA

arising from a violation [or alleged violation] of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security of 1974 [USA], including any amendment or re-enactment of that Act, or any similar provision in any state statutory law enacted in USA.

INSURED vs INSURED

- 4.8 made against any **Insured Person** by another **Insured Person** or by the **Company**, EXCEPT as provided in Automatic Extension 2.14 [INSURED vs INSURED]. For the purposes of this exclusion only, the **Company** includes any **Outside Entity**.

SUPERANNUATION

- 4.9 arising in connection with any superannuation or pension fund.

POLLUTION

- 4.10 arising from **Pollution**, EXCEPT as provided in Automatic Extension 2.2 [POLLUTION].

NUCLEAR

- 4.11 arising from ionising radiation 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 component of a nuclear assembly.

WAR

- 4.12 arising from 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.

TERRORISM

- 4.13 arising from terrorism [including contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft]. For the purposes of this exclusion, terrorism means any 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 are carried out for political, religious or ideological ends and is either directed towards the overthrowing or influencing of the government de jure or de facto or towards putting the public or any part of the public in fear.

SECURITIES

- 4.14 arising from or attributable to the offering of securities of the **Company**, other than those specifically agreed in writing by **Us**.

PROFESSIONAL SERVICES

- 4.15 arising from the provision of, or failure to provide, professional services or advice, including, a breach of any contract to provide such services or advice, except for a **Management Act** by an **Insured Person** acting solely in their capacity as an **Insured Person** and in circumstances where such professional services or advice is provided to the **Company** and not to third parties as part of the professional services or advice provided by the **Company**.

MAJOR SHAREHOLDERS

- 4.16 brought by or on behalf of any shareholder owning or controlling more than 15% of the issued capital of the **Company** or **Outside Entity**.

5.0 CONDITIONS

REPORTING CLAIMS

- 5.1 As soon as possible, and within the **Insurance Period** [or within any extended reporting period under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD] if purchased], **We** must be given written notice of the **Claim**, and be given such information and assistance as **We** consider necessary to deal with the **Claim**.

MANAGING CLAIMS

- 5.2 **We** will have the right, but not the obligation, to control the defence and settlement of any **Claim** including the appointment of lawyers to represent any **Insured Person**. The **Insured Person** and the **Company** shall, as soon as possible, furnish **Us** with copies of reports, investigations, pleadings, letters, legal opinions and advices, claim forms and all other papers in connection with any **Claim** or circumstance reported. No **Defence Costs** shall be incurred, nor any admission, offer, settlement, promise or indemnity shall be made or given by any **Insured Person** or the **Company** without **Our** consent [which will not be unreasonably withheld]. Where

the same or a similar **Claim** is made against more than one **Insured Person**, or against the **Company** and any **Insured Person**, the same lawyers will be appointed to defend all parties, unless there is a conflict of interest between them.

SENIOR COUNSEL

- 5.3 The **Company**, the **Insured Persons** and **We** shall not be required to contest any **Claim** unless a Queen's Counsel, Senior Counsel or lawyer of equivalent standing [to be mutually agreed upon or, in the absence of agreement, to be appointed by the Chair or President of the local of Bar Council] shall advise that the **Claim** should be contested.

CLAIMS SETTLEMENTS

- 5.4 If any **Insured Person** refuses to consent to any settlement recommendation by **Us** and elects to contest a **Claim**, then **Our** liability for such **Claim** will not exceed the amount for which the **Claim** could have been settled, plus **Defence Costs** up to the date of the **Insured Person's** refusal to consent.

ALLOCATION

- 5.5 If a **Claim** is only partly covered by this policy [including a **Claim** involving both the **Insured Person** and the **Company**], and the **Insured Person**, the **Company**, and **We**, are unable to agree upon an allocation between what is covered and what is not, the allocation will be referred to a Queen's Counsel or Senior Counsel for a determination which will be binding on the **Insured** and **Us**. The choice of such Queen's Counsel or Senior Counsel is a matter for mutual agreement between the **Insured** and **Us**, but failing any such agreement, the choice will be made by the Chair or President of the local Bar Council. The fees for the determination are part of **Defence Costs**, and the allocation finally determined will also apply to any payments made by **Us** prior to the determination.

TAKEOVER/MERGER

- 5.6 In the event of a takeover by or merger with any other organisation, or if any entity or person acquires 50% or more of the voting stock of the **Company**, this policy will only cover **Claims** arising from a **Management Act** committed by the **Insured** prior to the date of such takeover, merger or acquisition UNLESS otherwise agreed by **Us**.

ACQUISITIONS

- 5.7 If during the **Insurance Period** the **Company** acquires [directly, or indirectly through any **Subsidiary**] a controlling interest in another company which has :

- total assets exceeding the sum stated in Item [F] of the Schedule; or
- any of its securities listed on any exchange in **USA** or **Canada**; or
- revenues or assets exceeding US\$5,000,000 in the **USA** or **Canada**,

then this policy will only cover that company if **We** are provided with such details as **We** require of the acquisition, and **We** subsequently confirm such cover [which may be subject to additional premium and/or special conditions].

SUBROGATION

- 5.8 If **We** make any payment under this policy, **We** will become entitled to the rights of recovery of the **Insured Person** and the **Company**. In exercising these rights, **We** will be entitled to reasonable co-operation and assistance from the **Insured Person** and the **Company**.

AUTHORISATION

- 5.9 The **Company** agrees to act on behalf of all **Insured Persons** regarding the communication of notices under this policy, including reporting of **Claims**, cancellation, premium payment, endorsements, seeking inclusion of acquisitions required under Condition 5.7 [ACQUISITIONS] and the exercising of the extended reporting period option under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD]. The **Insured Persons** agree that the **Company** will so act on their behalf.

GOVERNING LAW

- 5.10 This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts [or a federal court] based in that state or territory.

ASSIGNMENT

- 5.11 This policy cannot be assigned without **Our** written consent.

CONSIDERATION/RELIANCE

- 5.12 The cover provided by **Us** under this policy is in consideration of the payment of the agreed premium, and in reliance on the statements made and information provided to **Us** by the **Insured Persons**.

VALIDITY

- 5.13 To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

HEADINGS

- 5.14 Paragraph titles used in this policy are included for reference purposes only and do not form part of this policy for the purpose of its construction or interpretation.

CANCELLATION

- 5.15 The **Company** may cancel this policy at any time by notifying **Us** in writing. **We** may also cancel this policy, but only in accordance with the law. In the event of cancellation, any refund of premium, and the amount of that refund, is at our sole discretion.

SERVICE OF SUIT

- 5.16 Any summons or process to be served upon the **Security** may be served upon:

Lloyd's Underwriters General Representative in Australia,
Level 9, 1 O'Connell Street,
SYDNEY NSW 2000.

who has authority to accept service and to enter an appearance on behalf of the **Security**, and who is directed at the **Company's** request to give a written undertaking to the **Company** that they will enter an appearance on behalf of the **Security**.

GENERAL INSURANCE CODE of PRACTICE

- 5.17 Other than for **Claims** managed outside Australia, this policy complies with the Insurance Council of Australia's General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

Lloyd's Underwriters' General Representative in Australia,
Level 9, 1 O'Connell Street,
SYDNEY NSW 2000.

who will refer the matter to Policyholder and Market Assistance at Lloyd's. If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

6.0 LIMITS, EXCESSES AND MULTIPLE CLAIMS

LIMITS

- 6.1 **Our** aggregate limit of liability for all **Loss** arising from all **Claims** [including claims made under the Automatic Extensions] under this policy is the **Sum Insured** [subject to the sublimits stated in Items [D] and [E] of the Schedule], being the amount stated in Item [C] of the Schedule. Sub-limits of liability stated in Items [D] and [E] of the Schedule, and **Our** liability to make payments under the Automatic Extensions to this policy, are part of the **Sum Insured** and not in addition to it.

EXCESS

- 6.2 The **Excess**, being the amount stated in Item [G] of the Schedule, shall apply to the **Loss** arising from each **Claim** [including, unless otherwise stated, claims made under the Automatic Extensions]. EXCEPT as provided under Automatic Extension 2.7 [INDEMNITY PRESERVATION], **We** will have no obligation to pay any **Loss** below the **Excess** for each **Claim** [or claim under the Automatic Extensions].

MULTIPLE CLAIMS

- 6.3 All **Claims** or series of **Claims** arising from, attributable to, or which are otherwise causally connected with a single **Management Act** or a series of related **Management Acts** or which are otherwise causally connected, will be considered one **Claim**.

7.0 DEFINITIONS

- 7.1 **Claim[s]** means a written demand for compensation or damages, or civil or criminal proceedings.
- 7.2 **Company** means the company named in Item [A] of the Schedule, and any **Subsidiary** subject to Automatic Extension 2.13 [SUBSIDIARIES-NEW/OLD/RUN-OFF].
- 7.3 **Defence Costs** means the reasonable and necessary costs, charges and expenses incurred in defending, investigating or responding to a **Claim**, or in attending proceedings covered by Automatic Extension 2.11 [INQUIRIES]. **Defence Costs** do not include the salaries, wages, benefits and personal expenses of any **Insured Person**.
- 7.4 **Employment Act** means any employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising relating to employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment; wrongful discrimination; failure to grant tenure; invasion of privacy or defamation, committed by the **Insured Person**.
- 7.5 **Indemnification** means that the **Company** or **Outside Entity** is discharging by way of indemnity the liability of any **Insured Person** for **Loss** as it falls due to be paid.
- 7.6 **Insurance Period** means the period stated in Item [B] of the Schedule.
- 7.7 **Insured Person** means any natural person who was, is or becomes a director, secretary, executive officer or employee of the **Company**; or any natural person who by virtue of legislation is deemed to be a director, secretary, executive officer or employee of the **Company**.
- 7.8 **Loss** means **Defence Costs** and any other amount payable for a **Claim** including damages, judgements, settlements and interest. **Loss** does not include fines, taxes, penalties, punitive or exemplary or multiple damages EXCEPT as provided under Automatic Extension 2.12 [PECUNIARY PENALTIES].
- 7.9 **Management Acts** means any actual or alleged act, error, omission, conduct, misstatement, misleading statement, neglect, or breach of: duty, trust, contract, warranty of authority, statute or confidentiality by an **Insured Person** in their capacity as an **Insured Person**.

- 7.10 **Outside Entity** means:
- any non-profit organisation of any kind that is exempt from the payment of income tax, other than a **Subsidiary**.
 - any organization named in Item [H] of the **Schedule**, or any organisation which we subsequently agree to be an **Outside Entity**.
- 7.11 **Pollution** means any actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of pollutants or contamination of whatever kind, or any direction or request that the **Insured Person** or the **Company** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants.
- 7.12 **Security** means: certain Underwriters at Lloyd's, each of whom [including their executors and administrators] is only liable for their share of any claim, loss, liability or expense payable by this policy. Details of each Syndicate and its share can be obtained from Nova Underwriting Pty Ltd. The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co- subscribing Underwriter who for any reason does not satisfy all or part of its obligations.
- 7.13 **Subsidiary** means:
- a subsidiary of the **Company** as defined in the Corporations Act 2001.
 - a body corporate in which the **Company** controls the composition of the board, or controls more than 50% of the issued share capital.
- 7.14 **Us, We** and **Our** means Nova Underwriting Pty Ltd on behalf of the **Security**.
- 7.15 **USA** or **Canada** means the territories, possessions and states of the United States of America or Canada.