



# Management Liability Policy Wording

## How We protect Your privacy

**We** use information provided by **Our** customers to allow **Us** to offer **Our** products and services. This means **We** may need to collect **Your** personal information, and sometimes sensitive information about **You** as well (for example, **Your** claims history). **We** will collect this information directly from **You** where possible, but there may be occasions when **We** collect this information from someone else.

**We** will only use **Your** information for the purposes for which it was collected, other related purposes and as permitted or required by law. **You** may choose not to give **Us** **Your** information, but this may affect **Our** ability to provide **You** with insurance cover.

**We** may share this information with government and law enforcement bodies if required by law and others who provide services to **Us** or on **Our** behalf, some of which may be located outside of Australia.

By applying for, using or renewing any of **Our** products or services, or providing **Us** with **Your** information, **You** agree to this information being collected, held, used and disclosed as set out in this **Policy**.

**You** can access **Our** privacy policy at [www.pacificindemnity.com.au/privacy-policy](http://www.pacificindemnity.com.au/privacy-policy).

**You** can access the **Insurer's** privacy policy on their website at:

<https://axaxl.com/en-au/privacy-notice>.

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (Code), which is a voluntary self-regulatory code.

The objectives of the Code are:

- to commit **Us** to high standards of service;
- to promote better, more informed relations between **Us** and **You**;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes **You** make about **Us**; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code aims to raise the standards of practice and service in the insurance industry. **We** comply with the Code to the extent that it applies to wholesale general insurance products. For further information on the Code please visit [www.codeofpractice.com.au](http://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](http://www.insurancecode.org.au)

## Complaints and disputes

If **You** have any concerns or wish to make a complaint in relation to this **Policy** or **Our** services, please contact: [claims@pacificindemnity.com.au](mailto:claims@pacificindemnity.com.au)

**We** will acknowledge receipt of **Your** complaint and do **Our** utmost to resolve the complaint to **Your** satisfaction within 30 business days.

If a dispute arises under this **Policy**, this **Policy** will be subject to Australian law and practice, and **We** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia.

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

Pacific Indemnity Underwriting Solutions Pty Ltd  
Level 3, 84 William Street Melbourne 3000  
PO Box 2 Collins Street West, Melbourne 8007  
Email: [claims@pacificindemnity.com.au](mailto:claims@pacificindemnity.com.au)

## Intermediary Remuneration

Pacific Indemnity Underwriting Solutions Pty Ltd (Pacific Indemnity) pays remuneration to insurance intermediaries when **We** issue, renew or vary a policy the intermediary has arranged or referred to **Us**. The type and amount of remuneration varies and may include commission and other payments. If **You** require more information about remuneration **We** may pay **Your** intermediary **You** should ask **Your** intermediary.

## We, Us and Our

For the purposes of this **Policy**, '**We**', '**Us**', and '**Our**' means Pacific Indemnity ABN 14 606 511 639 - on behalf of the **Insurer**.

## About Pacific Indemnity

Pacific Indemnity specialises in professional and financial lines insurances, including management liability, directors' and officers' liability, professional indemnity, malpractice, information and communications technology insurance, broadform liability and related products.

Pacific Indemnity issues and administers the **Policy** under a binding authority from the **Insurer**. In doing so, Pacific Indemnity acts as an agent of the **Insurer** and not as **Your** agent.

## Wholesale only

Pacific Indemnity is only licensed to offer or provide General Insurance products or services which do not include any of the following types of General Insurance (which are defined by the *Corporations Act 2001* (Cth) as "retail"): Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit, Travel, Personal or Domestic Property, Medical Indemnity or any other kind of General Insurance which has been prescribed by the Corporations Regulations.

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In consideration of payment, or agreement to pay the **Premium**, and any disclosure made in the **Proposal**, **We** agree to provide indemnity in accordance with the terms and conditions of this **Policy**.

## 1. Insuring Clauses

This **Policy** covers **Claims** first made against an **Insured** and notified to **Us** during the **Period of Insurance** or any applicable **Runoff Period** subject to the terms, conditions and exclusions of the **Policy** (including Insuring Clauses, **Schedule**, **Limit of Liability** and **Excess**).

The **Policy** will only provide cover in respect of any act, error, omission, event, **Loss**, conduct, **Wrongful Act**, **Crime Loss**, **Employment Practices Violation** or any other event which first occurred on or after the **Retroactive Date**.

### 1.1 Directors & Officers Liability

**We** will pay to, on behalf of an **Insured Person**, **Loss** arising from a **Claim** which is first made and notified to **Us** during the **Period of Insurance** in connection with:

- a) a **Wrongful Act**; or
- b) **Employment Practices Violation**,

for which that **Insured Person** is legally liable provided that the **Insured Person** has not been indemnified by **You** for that **Loss**.

### 1.2 Corporate Cover

In respect of any **Claim** which is first made and notified to **Us** during the **Period of Insurance**, **We** will pay to or on behalf of **You**:

- a) **Corporate Reimbursement**

**Loss** that **You** are legally required or permitted to pay to or on behalf of any **Insured Person** in connection with a **Wrongful Act** or **Employment Practices Violation**.

- b) **Entity**

**Loss** arising from a **Claim** against **You** for a **Wrongful Act**.

- c) **Statutory Liability**

Notwithstanding Exclusions 3.1 (Bodily Injury & Property Damage) and 3.6 (Pollution), **Loss** arising from a **Claim** against **You** in respect of a **Statutory Liability**.

### 1.3 Employment Practices Liability

**We** will pay **Loss** arising from a **Claim** which is first made and notified to **Us** during the **Period of Insurance**, to or on behalf of **You**, for any **Employment Practices Violation**.

### 1.4 Crime Loss Cover

**We** will pay any **Crime Loss** sustained by **You** which is:

- a) caused by **Criminal Conduct**; and
- b) is first discovered and notified to **Us** during the **Period of Insurance**.

### 1.5 Crisis Loss Cover

**We** will pay any **Crisis Loss Expenses** incurred by **You** in connection with **Crisis Loss** which is first identified and notified to **Us** during the **Period of Insurance**.

### 1.6 Tax Audit Cover

**We** will pay any **Tax Audit Costs** incurred by **You** in connection with a **Tax Audit Notice** received by **You** and notified to **Us** during the **Period of Insurance**.

## 2. Extensions

Each of the following extensions applies unless otherwise stated in an endorsement or the **Schedule** as not included and are subject to the terms, conditions and exclusions of this **Policy** unless specifically stated to the contrary.

A **Sub-Limit of Liability** may apply to the following extensions. Any applicable **Sub-Limit of Liability** is specified in the **Schedule**.

**We** extend cover as follows:

### 2.1 Advanced Payment

Except where **We** have denied indemnity, **We** will pay:

- a) **Asset & Liberty Expenses**;
- b) **Defence Costs**;
- c) **Extradition Expenses**;
- d) **Investigation Costs**; and/or
- e) **Prosecution Costs**,

as and when they are incurred, but no later than thirty (30) days after **We** have received itemised bills for those costs and expenses.

If it is established that any amounts advanced in accordance with this extension are not covered by this **Policy**, or an **Insured** is otherwise not entitled to payment of such amounts under this **Policy**, each **Insured** having received the benefit of such payments, or the payments themselves, must repay such amounts to **Us**.

### 2.2 Asset & Liberty Safeguard

**We** will pay **Loss** including:

- a) **Asset & Liberty Expenses**;
- b) **Bail Bond & Civil Bond Expenses**;
- c) **Confiscation Expenses**; and/or
- d) **Prosecution Costs**,

but only in respect of **Claims** made against, an **Insured Person**.

## 2.3 Breach of Contract Defence Costs

We will pay **Defence Costs** arising from any **Claim** against **You** in connection with an unintentional, alleged breach of any express contract or agreement with any person or entity not covered under this **Policy** arising from the ordinary course of conducting the business activities specified in the **Schedule**.

## 2.4 Continuous Cover

Where **You** have failed to notify facts, circumstances, acts or omissions to **Us** pursuant to section 40(3) of the *Insurance Contracts Act 1984* (Cth) under an earlier management liability policy issued by **Us**, Exclusion 3.4 (Known Circumstances) will not apply to such facts, circumstances, acts or omissions provided that:

- a) **You** have been continuously insured, without interruption, under a management liability policy issued by **Us** from the time at which **You** first became aware, or ought reasonably to have become aware, of such facts, circumstances, acts or omissions;
- b) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such facts, circumstances, acts or omissions;
- c) **We** may reduce **Our** liability to indemnify **You** to the extent **We** have been prejudiced by **Your** failure to notify such facts, circumstances, acts or omissions at the earliest opportunity; and
- d) in determining any such prejudice, **We** may take into account the limits of liability, sub-limits, terms, conditions and exclusions of any earlier policy issued by **Us**.

The terms, conditions, exclusions and **Limit of Liability** of this **Policy** apply.

For the avoidance of doubt, this clause does not operate to increase the **Limit of Liability** or provide indemnity under any earlier policy.

## 2.5 Copyright Defence Costs

We will pay **Defence Costs** for any **Claim** arising from an unintentional and accidental breach of copyright by **You** in the ordinary course of conducting **Your** business (as specified in the **Schedule**) subject to **You** demonstrating that adequate copyright compliance procedures were in place at the time of the incident giving rise to the **Claim**, namely:

- a) procedures for obtaining permission to reproduce or copy material;
- b) procedures for posting content online;
- c) provision is made in all employment contracts with **Insured Persons** and contracts with independent contractors or suppliers regarding the ownership of intellectual property rights;
- d) advice from a qualified independent third party confirming that any product designed, manufactured, or distributed by **You** does not infringe any third party's intellectual property rights; and

- e) advice from a qualified independent third party confirming that any publication issued by **You** does not infringe any third party's intellectual property rights.

We will not advance **Defence Costs** under this extension if **You** are unable to demonstrate that adequate copyright compliance procedures were in place at the time of the incident.

## 2.6 Court Attendance Costs

We will pay **Court Attendance Costs** to any **Insured Person** who is required to attend court for the purpose of giving evidence as a witness in connection with a **Claim** or **Investigation** covered under this **Policy**.

## 2.7 Cyber Incident Affirmative Cover

We will pay any **Loss** or **Defence Costs** arising from a **Cyber Act** or **Cyber Incident**, but only to the extent that such **Loss** or **Defence Costs** arise from a **Claim**, **Wrongful Act** or matter that is otherwise covered under this **Policy** and subject always to its terms, conditions, limitations and exclusions.

This extension will not operate to override or increase any otherwise applicable **Limit of Liability** or **Sub-Limit of Liability**.

## 2.8 Emergency Expenses

In cases of emergency, notwithstanding, Claim Conditions 4.1 (Claims Notification) and 4.3 (Consent for costs and expenses) where it is not reasonably possible for the **Insured** to obtain **Our** consent prior to incurring **Defence Costs** or **Investigation Costs**, then the **Insured** may incur necessary **Defence Costs** or **Investigation Costs**. We will reimburse or pay to, or on behalf of, an **Insured**, any such **Defence Costs** or **Investigation Costs** incurred provided that the **Insured** obtains **Our** retrospective written consent (which **We** will not unreasonably withhold) within twenty-eight (28) days of such costs and expenses being incurred and during the **Period of Insurance**.

## 2.9 Employment Superannuation Scheme

We will pay, on behalf of an **Insured**, **Loss** in respect of any **Claim** by reason of a **Wrongful Act** committed in the operation, administration or sponsorship of any superannuation, profit sharing or employee benefits scheme (operating for the benefit of **Your** directors, officers and/or employees) which is not controlled by external superannuation trustees.

## 2.10 Enforceable Undertaking Expenses

We will pay the reasonable and necessary costs incurred by the **Policyholder** as a direct result of a regulatory investigation first commenced during the **Period of Insurance**, where the **Policyholder** has given an enforceable undertaking that is accepted by a governmental, regulatory or law enforcement body.

The costs covered under this extension include:

- a) implementing systems, processes and procedures to improve compliance and risk management, including staff training;
- b) legal fees, costs and expenses; and

- c) a monetary donation made to a not-for-profit organisation, where those costs are required as a condition of the enforceable undertaking.

### 2.11 Erroneous Payment Cover

We will reimburse the **Policyholder** for its direct loss (that is not otherwise within the scope of any other Insuring Clause, extension or endorsement of this **Policy**) resulting from money or **Securities** being erroneously transferred by the **Policyholder** to a third party and wrongfully retained by that third party, provided that such loss is first discovered during the **Period of Insurance**. **Our** liability under this extension is conditional upon the **Policyholder** having taken all reasonable steps, as agreed with **Us**, to recover the money or **Securities** from the third party.

### 2.12 Extradition Expenses

We will pay **Extradition Expenses** to or on behalf of an **Insured Person**, arising from an **Extradition Event**.

### 2.13 Fines & Penalties

We will pay any fine or pecuniary penalty imposed pursuant to any statute to, or on behalf of, any **Insured Person**, arising from a **Claim**, except where **We** are prohibited by law from doing so.

### 2.14 Forensic Investigation Expenses

We will pay **Forensic Investigation Expenses** incurred in connection with any **Crime Loss**.

The **Sub-Limit of Liability** applicable to this extension is in addition to the **Limit of Liability** specified in **Schedule** applicable to any **Crime Loss**.

### 2.15 Health & Safety Costs

Notwithstanding Exclusion 3.1 (Bodily Injury & Property Damage), **We** will pay **Defence Costs** to or on behalf of any **Insured**, in respect of a **Claim** or **Investigation** for an alleged breach of Work, Health and Safety legislation or regulations, including workplace death and industrial or corporate manslaughter legislation or regulations, provided that such **Claim** or **Investigation** is brought in Australia or New Zealand.

Where this extension responds to a **Claim**, any cover available under Insuring Clause 1.2 c) (Corporate Cover – Statutory Liability) in respect of that same **Claim** is limited solely to Statutory Liability and does not include **Defence Costs**.

### 2.16 Heavy Vehicle National Law Affirmative Cover

We will pay to or on behalf of **You**, in respect of Insuring Clauses 1.1 (Directors & Officers Liability) and 1.2 (Corporate Cover):

- a) **Investigation Costs** arising from the attendance by an **Insured** for examination at, or the production of documents to, any investigation in connection with a breach or alleged breach of the Heavy Vehicle National Law;
- b) **Defence Costs** arising from any official notice, proceeding, or prosecution alleging that an **Insured** has breached the Heavy Vehicle National Law; or

- c) Pecuniary penalties for a Category 2 or Category 3 offence under the Heavy Vehicle National Law,

subject always to Exclusion 3.3 (Conduct).

For the purpose of this extension only, Exclusion 3.1 (Bodily Injury & Property Damage) and Exclusion 3.18 a) (Statutory Liability) do not apply.

### 2.17 Identity Fraud Cover

We will pay **Identity Fraud Expenses** incurred by **You** if:

- a) any entity or individual other than an **Insured Person** enters into an agreement with a third party while fraudulently representing themselves as **You**: and
- b) such fraudulent representation is first discovered and notified to **Us** during the **Period of Insurance** or any applicable **Runoff Period**,

provided that such third party has made, or threatens to make, a demand or take steps to enforce such agreement against **You**.

This extension will only pay **Identity Fraud Expenses** for the direct purpose of establishing that a fraudulent misrepresentation has occurred, should the third-party attempt to enforce such an agreement against **You**.

### 2.18 Insured Person Tax Liability

We will pay any unpaid taxes that an **Insured Person** becomes personally liable to pay as a result of the insolvency, receivership or winding up of **You**, first commenced during the **Period of Insurance** provided that such liability does not arise from the wilful intention of the **Insured Person** or **You** to breach any statutory duty governing the payment of taxes.

### 2.19 Loss Mitigation Cover

We will pay **Your** reasonable mitigation costs incurred to limit exposure to an actual or potential claim for a **Wrongful Act** otherwise covered by this **Policy**, provided **You**:

- a) notify **Us** during the **Period of Insurance** of the circumstances and **Your** proposed mitigation action prior to **You** taking such action; and
- b) satisfy **Us** that the circumstances would result in a claim covered by this **Policy** and the proposed action is reasonable, necessary, and likely to cost less than the potential claim.

Mitigation costs covered under this extension exclude:

- a) lost profits, revenue, or internal overhead (wages, staff costs, management time);
- b) payments or compensation to customers or clients;
- c) any increased liability caused by **Your** mitigation attempts; and
- d) costs **We** have not approved.

## 2.20 New Subsidiary Cover

Cover is extended to include any entity that becomes controlled by the **Policyholder** during the **Period of Insurance**, unless such entity:

- a) has securities listed on any exchange in the United States of America or its territories; or
- b) is a bank, credit institution, building society, clearing house, insurer, reinsurer, stockbroker, or similar entity.

If a newly acquired **Subsidiary** has total assets exceeding twenty-five percent (25%) of the gross consolidated assets of the **Policyholder**, cover under this extension applies only for ninety (90) days from the date of acquisition (and no longer than the expiry of the **Period of Insurance**), unless **We** otherwise agree in writing. The **Policyholder** must notify **Us** within that ninety (90) day period and provide full particulars so **We** may determine ongoing cover, terms, conditions, and any additional premium.

Cover under this extension applies only in respect of **Wrongful Acts, Employment Practices Violations, Criminal Conduct, Cyber Acts** or other conduct committed or allegedly committed while the entity was a **Subsidiary** of the **Policyholder**.

## 2.21 Outside Directorship Indemnification

**We** will extend cover under Insuring Clause 1.1 (Directors & Officers Liability) of this **Policy** to an **Outside Entity Director**. **We** will only provide indemnity under the extension after the erosion of:

- a) any indemnification provided by the **Outside Entity**; and
- b) other valid directors' & officers' or management liability insurances for the benefit of its directors and officers or employees.

## 2.22 Pollution Defence Costs

Notwithstanding Exclusion 3.1 (Bodily Injury & Property Damage) and Exclusion 3.6 (Pollution), **We** will pay:

- a) **Defence Costs** to or on behalf of any **Insured**, responding to a **Claim** or **Investigation** arising directly or indirectly from the discharge, dispersal, release or escape of **Pollutants**; and
- b) **Loss** arising from any **Claim** in connection with **Pollutants** brought by any shareholder of the **Policyholder** either directly or derivatively alleging damage to the **Policyholder** or its shareholders.

Where this extension responds to a **Claim**, any cover available under Insuring Clause 1.2 c) (Corporate Cover — Statutory Liability) in respect of that same **Claim** is limited solely to Statutory Liability and does not include **Defence Costs**.

## 2.23 Public Relations Expenses

**We** will pay the reasonable and necessary fees, costs and expenses to or on behalf of the **Insured** for a public relations consultant retained by **You** to design and implement a **Publicity Campaign** approved by **Us**, which is designed solely to:

- a) mitigate any **Loss** under this **Policy**; or
- b) assist in exonerating any **Insured** against an alleged **Wrongful Act** which is the subject of a **Claim** or **Investigation** for which the applicable **Insured** is entitled to indemnity under this **Policy**.

## 2.24 Punitive, Aggravated, Exemplary & Multiple Damages Extension

**We** will pay to or on behalf of **You**, any punitive, aggravated, exemplary, or multiple damages as **Loss** under the applicable Insuring Clause or extension of this **Policy**, if **We** are not legally prohibited from doing so.

**We** will not make any payment under this extension for, or in connection with:

- a) any monetary payment, penalty, or fine where **We** are prohibited from paying under the applicable law of the jurisdiction in which the **Claim** is brought;
- b) any fines or penalties imposed in criminal proceedings, except in connection with any **Statutory Liability**;
- c) any penalty awarded outside the jurisdiction, or pursuant to the laws, of any country other than Australia or New Zealand.

## 2.25 Runoff Period

Other than in the event of a **Change in Ownership**, the **Policyholder** will receive:

- a) an automatic **Runoff Period** of ninety (90) days; and
- b) subject to **Our** approval, an optional **Runoff Period** of twelve (12) months commencing on the expiry of the **Period of Insurance** if this **Policy** is not renewed or replaced with a policy or similar cover and requested in writing within thirty (30) days of the expiry of the **Period of Insurance**.

The additional premium payable in respect of the twelve (12) month **Runoff Period** will be one-hundred percent (100%) of the applicable **Premium** in respect of this **Policy**.

In the event of a **Change in Ownership**, the **Policyholder** may request an optional eighty-four (84) month **Runoff Period** commencing on the expiry of the **Period of Insurance** of this **Policy**. Any **Runoff Period** afforded is subject to **Our** approval and such reasonable terms, conditions, and payment of additional premium to be reasonably determined by **Us**.

The **Runoff Period** extension is non-cancellable and does not in any way increase the **Limit of Liability** of this **Policy**.

## 2.26 Runoff for Retired Insured Persons

At no additional premium, **We** will provide an automatic eighty-four (84) month **Runoff Period** for any **Insured Person** who ceases to be an **Insured Person** prior to or during the **Period of Insurance**, for reasons other than involuntary termination or **Change in Ownership**, disqualification from acting as a director or officer, or cessation of duties due to **Your** insolvency, liquidation, administration, or analogous proceedings, provided that:

- a) the **Policy** is not renewed or replaced with a policy or similar cover; or
- b) where the **Policy** is renewed or replaced with a policy or similar cover, such renewal or replacement policy does not provide cover for such **Insured Persons** who have ceased to be an **Insured Person**.

## 2.27 Self-Report, Raid & Pre-Claim Inquiry Costs

**We** will pay the reasonable costs and expenses to or on behalf of an **Insured Person** in connection with a:

- a) **Self-Report**;
- b) **Raid**; or
- c) **Pre-Claim Inquiry**.

Costs incurred as a result of a **Self-Report**, **Raid** or a **Pre-Claim Inquiry** excludes any remuneration, overheads, benefits, cost of time, or any imposed fines and penalties, of any **Insured**.

## 2.28 Social Engineering Fraud

**We** will pay any losses incurred by **You** arising from **Social Engineering Fraud** first discovered during the **Period of Insurance** where such transfer is made in good faith in response to a fraudulent instruction, and is directly in connection with a **Crime Loss**.

This extension applies only where at the inception of the **Policy**, **You** have in place written verification procedures which include, at a minimum:

- a) independent verification of the identity of any party to whom funds are to be transferred; and
- b) a callback procedure using a telephone number held on file (and not one provided in the fraudulent instruction), prior to any change in banking details or the processing of any payment or refund.

## 2.29 Taxation Risk Review Costs

**We** will pay the reasonable and necessary fees, costs and expenses to or on behalf of the **Policyholder** (but not any other of **You**) for a qualified accountant or registered tax agent retained by the **Policyholder** for the purpose of responding to a risk review or comprehensive risk review conducted by the Australian Taxation Office or any tax collection authority of any Australian state or territory government, the first notice of which is received by the **Policyholder** during the **Period of Insurance**.

# 3. General Exclusions

The following exclusions apply to all Insuring Clauses, extensions, endorsements and other coverage under this **Policy** except as specifically stated otherwise.

**We** will not pay any amount or have any liability for or in respect of any **Loss** or other amounts under this **Policy**:

## 3.1 Bodily Injury & Property Damage

arising out of or in connection with:

- a) bodily injury, mental or emotional distress (except in relation to any **Employment Practices Violation**), sickness, disease, or the death of any person; or
- b) loss of, damage to or destruction of any property (real or personal), or any consequential loss, damage or destruction of that property (including the loss of use of that property).

## 3.2 Change in Ownership

arising out of or in connection with:

- a) a **Wrongful Act**; or
- b) an **Investigation**; or
- c) any other conduct or event which may give rise to any payment under this **Policy**;

occurring or allegedly occurring after a **Change in Ownership** during the **Period of Insurance**.

## 3.3 Conduct

arising out of or in connection with:

- a) any conduct involving a wilful breach of a duty, law or regulation by an **Insured Person**;
- b) any deliberately dishonest, fraudulent or malicious act or omission by an **Insured Person**; or
- c) any improper use of information or position by an **Insured Person** to gain an advantage which an **Insured Person** was not legally entitled.

This exclusion will only apply if the conduct in a), b) or c) above is established by a written or verbal admission or determined by final adjudication of a court or arbitral tribunal, after exhaustion of all appeal rights.

For the purpose of determining the applicability of this exclusion, the conduct of any **Insured** will not be imputed to any other **Insured Person**.

## 3.4 Known Circumstances

Arising out of or in connection with any **Claim** or **Investigation**, or facts which may give rise to any **Claim** or **Investigation**:

- a) known to **You** at the inception date of this **Policy**; or
- b) arising from a **Known Circumstance**; or

- c) directly or indirectly based upon, attributable to, or in consequence of any **Known Circumstance** or **Loss** in respect of a **Claim** known to **You** at the inception date of this **Policy**; or
- d) disclosed in the **Proposal** or arising from or in connection with any facts or circumstances disclosed in the **Proposal**.

### 3.5 Major Shareholder

Arising out of or in connection with any **Claim** brought or maintained by or on behalf of any shareholder holding or controlling (directly or beneficially) twenty-five percent (25%) or more of the voting shares or rights or issued capital of **You** and has or had board of directors' representation, if the **Wrongful Act** occurred or allegedly occurred any time after the date on which that shareholder became a major shareholder.

### 3.6 Pollution

Arising out of or in connection with, directly or indirectly or in consequence of the:

- a) the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere, or any water course or body of water; or
- b) the testing, cleaning up, monitoring, remediating or removal of such **Pollutants**.

### 3.7 Professional Services

Arising out of or in connection with any actual or alleged performance of, or failure to perform, professional services to a third party of any kind.

However, this exclusion does not apply to any **Claim** alleging that an **Insured Person** has failed to supervise an employee in the performance of professional services.

### 3.8 Sanctions

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

### 3.9 Securities

Arising out of or in connection with any offer, sale, or listing of any **Securities** by **You**.

### 3.10 Terrorism

Arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

### 3.11 Uninsurable Losses

any amount **We** are prohibited from paying at law.

### 3.12 US Jurisdiction Exclusion

Arising out of or in connection with any **Claim** brought by or at the direction of any **Insured**, or **Outside Entity** maintained or brought in the jurisdiction or under the laws of the United States of America, its territories, or its protectorates.

### 3.13 War & Uprisings

Arising out of or in connection with any **Claim** arising directly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

### 3.14 Crime Loss Exclusions

In relation to Insuring Clause 1.4 (Crime Loss Cover) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) any **Crime Loss**:
  - (i) first discovered prior to the **Period of Insurance**;
  - (ii) first discovered after the expiry of the **Period of Insurance**, or the **Runoff Period**, if applicable; or
  - (iii) connected with an employee's or third party's known or suspected fraudulent or dishonest conduct, where such **Crime Loss** occurs more than thirty (30) days after a director or officer (not in collusion) first gained actual knowledge of or suspicion of such conduct;
  - (iv) caused by an employee, if prior to their employment:
    - (1) a director or officer was aware of prior acts of theft, fraud, or dishonesty by that employee involving money, securities, or property valued at \$10,000 or more; or
    - (2) **You** failed to make reasonable pre-employment enquiries regarding such matters;
  - (v) arising from or connected with:
    - (1) **Social Engineering Fraud**, unless such loss is covered under Extension 2.28 (Social Engineering Fraud) and that extension is specified as Included in the **Schedule**; or
    - (2) phishing, phreaking, or push-payment fraud.

- b) **Crime Loss** resulting from or in connection with fraudulent or dishonest acts, collusion, or complicity by:
- (i) any director owning or controlling more than five percent (5%) of **Your** issued share capital at the time of the act; or
  - (ii) any shareholder directly or indirectly owning or controlling more than five percent (5%) of the voting share capital of the **Policyholder**, a **Subsidiary**, or any associated company at the time of the act;
- c) indirect or consequential loss of any nature, including but not limited to:
- (i) any loss of income (such as interest and dividends) not realised by **You** or any other person or organisation; or
  - (ii) any costs incurred by **You** in re-writing or amending **Your** software programs or systems where such re-writing or amending is necessary to correct the programs or systems; or
  - (iii) any contractual penalties incurred by **You**; or
  - (iv) any liability to a third party; or
  - (v) any costs, fees or other expenses incurred by **You** in establishing a right under this **Policy**;
- d) any **Crime Loss** which can only be proved by means of one or more of the following: a profit and loss computation or comparison, or a comparison of inventory records with an actual physical inventory count;
- e) direct financial loss arising out of or in connection with the accessing, use, or dissemination of any confidential information (including, but not limited to, proprietary information, trade secrets, computer programs, customer information, patents, trademarks, copyrights, or processing methods);
- f) **Crime Loss** arising out of or in connection with:
- (i) the voluntary giving or surrendering of money, securities or other tangible property in any exchange or purchase, unless such **Crime Loss** is directly caused by **Criminal Conduct**; or
  - (ii) the complete or partial non-payment or default under any credit arrangement, including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason; or
  - (iii) any trading, whether or not in the name of **You** and whether or not in a genuine or fictitious account; or
  - (iv) the forgery, alteration or fraudulent use of any credit card, store card, fuel card or other form of credit issued by **You** to employees, unless the provisions, conditions and other terms under which such card was issued have been fully complied with by **You**;
- g) However, **We** will not pay any amount or have any liability for or in respect of any **Crime Loss** arising, directly or indirectly, from issuing or drawing cheques, making account withdrawals, or initiating funds transfers exceeding \$1,000 in value, due to the absence of, or failure to adhere to, clear segregation of duties and procedures requiring independent authorisation and verification (including review of supporting documentation against independently prepared lists) for such transactions.

### 3.15 Employment Practices Exclusions

In relation to Insuring Clause 1.3 (Employment Practices Liability) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) industrial dispute (whether between employer and employee or between employees or their unions or generally), strike, picket, lock-out, go slow or work to rule action;
- b) **Claim** or **Investigation** brought about by, contributed to by, or which involve matters arising under, any workers' compensation, disability benefits, paid or unpaid leave, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, welfare benefits or similar or related obligations whatsoever;
- c) **Claim** or **Investigation** for the cost of physical modifications to premises, plant or equipment owned or occupied by **You**;
- d) **Claim** or **Investigation** for or in respect of obligation or breach of obligation providing for or under:
  - (i) paid or unpaid leave of any kind;
  - (ii) workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits or social security benefits;
  - (iii) redundancy or severance payments or entitlements; or
  - (iv) any industrial instrument or contract of employment;
- e) **Claim**, **Investigation** or other proceeding for or in respect of:
  - (i) a contract of employment alleged to be unfair;
  - (ii) employee benefits including but not limited to any fringe, health or superannuation benefits, bonus, or incentive payments, stock or share plans or entitlements;
  - (iii) back pay or contractual or required notice periods or notices of termination;
  - (iv) specified contractual obligation, except to the extent such obligation would have attached in the absence of such contract;
  - (v) the cost of reinstatement of any employee; or
  - (vi) educational, sensitivity or other corporate program, policy or seminar;

- f) **Claim or Investigation** brought and notified after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, or trustee administering a compromise or scheme of arrangement of or in respect of **You**.

### 3.16 Entity Cover Exclusions

In relation to Insuring Clause 1.2 b) (Corporate Cover – Entity) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) violation of intellectual property rights, including plagiarism, misappropriation, or infringement of copyright, patent, trademark, or trade secret;
- b) breach of competition laws, including anti-trust, cartel conduct, price fixing, price discrimination, predatory pricing, or unfair trade practices;
- c) liability under any contract or agreement, whether express or implied, including guarantees or warranties. This exclusion does not apply to liabilities that would have existed absent such contract or agreement;
- d) refund or repayment of fees, charges, or other amounts for services, advice, or goods;
- e) trading debt or other of **Your** business liabilities;
- f) obligation, or breach of an obligation, under any law or regulation governing paid or unpaid leave, or under any industrial agreement;
- g) employment-related obligation under workers' compensation, disability benefits, unemployment insurance or retirement benefits, or similar statutory or regulatory requirements;
- h) taxes, penalty taxes, or any costs, interest, or fees arising from a criminal prosecution; or
- i) **Claim** related to an entity, trust, or individual associated with an employee alleging an **Employment Practices Violation**, including compensation, damages, or monetary claims tied to remuneration such as shares, stock options, dividends, or equivalent entitlements.

### 3.17 Employment Superannuation Scheme Exclusions

In relation to Extension 2.9 (Employment Superannuation Scheme) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) **Claim or Investigation** maintained or brought in the jurisdiction or under the laws of the United States of America, its territories, or its protectorates for any actual or alleged violation or breach of any responsibilities, obligations or duties imposed under the Employee Retirement Income Security Act 1974 (USA) or any similar legislation or any amendment to it; or

- b) failure to fund the superannuation, profit sharing or employee benefits scheme in accordance with the superannuation, profit sharing or employee benefits scheme trust document or instrument or the failure to collect contributions owed to the superannuation, profit sharing or employee benefits scheme.  
This exclusion clause b) will not apply to **Defence Costs**.

### 3.18 Statutory Liability Exclusions

In relation to Insuring Clause 1.2 c) (Corporate Cover -Statutory Liability) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) actual or alleged contravention of any law relating to air, vehicle or marine traffic except to the extent that such contravention arises directly from the business of the **Insured**;
- b) actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, intellectual property rights, trade secrets, unfair trade practices, business competition, or any consumer protection legislation, including the Fair Trading Acts, the *Competition and Consumer Act 2010* (Cth), or any equivalent legislation of any jurisdiction, and any amendment, consolidation or re-enactment thereof;
- c) contract of service, or intended contract of service, with any current, former or prospective employee;
- d) actual or alleged breach of sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth);
- e) deliberate, dishonest, fraudulent, criminal or malicious act or omission, or any wilful violation or breach of any law, regulation, by-law or duty conferred by such law, regulation or by-law, committed by or with the consent of any **Insured**;
- f) actual or alleged breach of professional duty, or the provision of, or failure to provide, professional services or advice; or
- g) actual or alleged breach of any law or regulation relating to taxes, duties or revenue charges.

### 3.19 Tax Audit Exclusions

In relation to Insuring Clause 1.6 (Tax Audit Cover) only, and in addition to the General Exclusions above, **We** will not pay any amount or have any liability arising out of or in connection with any:

- a) improper, unwarranted or unjustified delay, refusal or failure by **You** to comply with a request made by or on behalf of any taxation authority for the production of documents or provision of information;
- b) enquiry or investigation by a taxation authority not amounting to or undertaken with an identified intention to conduct an audit of the past or future returns of the **Insured**;
- c) audit or investigation relating to income earned outside of Australia and its external territories or protectorates, or in respect of services performed outside of Australia and its external territories or protectorates;

- d) audit, investigation or proceeding conducted pursuant to any customs or excise legislation;
- e) audit or investigation where notice of the same, or information indicating its likely conduct, was received by the **Insured** prior to the commencement of the **Period of Insurance**. For the purpose of this exclusion, such notice or information will be deemed received upon communication by the relevant taxation authority to the **Insured** or any person acting on behalf of the **Insured**;
- f) fraudulent act, error, omission or misrepresentation committed by or on behalf of the **Insured**;
- g) **Claim or Investigation** arising from or in connection with the imposition or proposed imposition of any tax, penalty tax, fine, interest, costs, fees or expenses associated with any criminal prosecution;
- h) audit or investigation in respect of a return of income that was not prepared or reviewed by a qualified accountant or registered tax agent;
- i) **Tax Audit Costs** incurred after the issuance of a determination or assessment by a tax authority; or
- j) costs incurred by an accountant or registered tax agent to bring the books or records of the **Insured** up to date prior to their provision to a tax authority.

## 4. Claim conditions

Responsibilities in this section of the **Policy** apply to **You** and any **Insured** that is seeking indemnity or benefit under the **Policy**.

If **You** do not meet these responsibilities, **We** may refuse to pay a **Claim** or reduce cover under the **Policy** to the extent that **Our** interests have been prejudiced.

The course of action **We** take if **You** fail to meet these conditions will be considered in each circumstance based on what impact or effect **Your** failure to comply with the conditions of the **Policy** causes or contributes to the **Claim or Investigation** or changes **Our** liability under the **Policy**.

### 4.1 Claims Notification

**You** must notify **Us** of any:

- a) **Claim** first made; or
- b) **Investigation** first commenced or convened; or
- c) **Loss** first discovered,

as soon as reasonably practicable after such **Claim** is first made, **Investigation** first commenced or convened, or **Loss** first discovered, and in any event during the **Period of Insurance** or applicable **Runoff Period**. Late notification may result in reduction or denial of coverage to the extent **We** are prejudiced by the delay, in accordance with Section 54 of the *Insurance Contracts Act 1984* (Cth).

**Your** obligation to notify **Us** of such **Claims, Investigations**, or **Losses** applies irrespective of whether any potential or actual amount payable under the **Policy** may fall within the **Excess**.

Such notice must include all:

- a) details of alleged or potential loss and the parties involved in such **Claim, Investigation or Loss**; and
- b) details of any other insurance policy or indemnity that may be available to any **Insured** and which may cover such losses or amounts.

Nothing in this clause limits or affects the operation of Extension 2.4 (Continuous Cover).

### 4.2 Claims Co-operation

The **Insured** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen **Your** liability in relation to a **Claim, Investigation**, loss or other amount otherwise covered by this **Policy**; and
- b) at their own cost and as soon as reasonably possible, give to **Us** the assistance and information that **We** may reasonably require and request to:
  - (i) investigate, mitigate, defend or otherwise respond to a **Claim, Investigation** or other matter for which **You** are seeking payment or indemnity under this **Policy**; or
  - (ii) determine **Our** liability under this **Policy**.

**We** will only request information and documents relevant to handling **Your** claim and **We** will explain why it is needed.

### 4.3 Consent for costs and expenses

Except in relation to Extension 2.8 (Emergency Expenses), any fees, costs or expenses incurred under this **Policy** must be incurred with **Our** prior written consent, such consent not to be unreasonably withheld or delayed.

### 4.4 We can manage the Claim on your behalf

**We** can:

- a) take over and defend or settle any **Claim, Investigation** or other matter within the scope of this **Policy** in **Your** name; and
- b) claim in **Your** name, any right that **You** may have for contribution or indemnity.

**We** will act reasonably in exercising this right. **We** will keep **You** reasonably informed and updated with the progress of any such matter.

In the event of any material conflict of interest between **Insured Persons**, **We** will accept the retention of separate legal representation as reasonable and necessary.

#### 4.5 You must not admit liability for or settle any Claim

The **Insured** must not, without **Our** prior written consent (which **We** will not unreasonably withhold):

- a) admit, assume liability for, or settle any **Claim** or any other matter within the scope of this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

Other than by way of Extension 2.8 (Emergency Expenses), if **Our** prior written consent is not obtained, **We** may reduce the amount **We** are required to cover under the **Policy** to the extent **We** have been prejudiced.

#### 4.6 Your right to contest

If **You** elect not to consent to a settlement that **We** recommend and **You** want to contest or continue the dispute or legal proceedings, then **We** will only cover **You** subject always to the other terms, condition and exclusion of this **Policy** for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess** specified in the **Schedule**; plus
- c) the **Defence Costs** calculated to the date **You** elected not to consent to the settlement.

#### 4.7 Senior Counsel

Unless a **Senior Counsel**, that **We** and **You** both agree to instruct, advises that the **Claim** should be contested, then to the extent permitted by law, neither **We** nor **You** can require the other to contest any legal proceedings in relation to a **Claim** if the other does not agree to do so.

In formulating their advice, **Senior Counsel** must be instructed to consider the matter, having regard to materially relevant criteria including but not limited to:

- a) the likely costs of defence;
- b) the damages and costs likely to be recovered; and
- c) **Your** prospects of successfully defending the **Claim**.

The cost of **Senior Counsel**'s opinion will form part of the **Defence Costs** or **Investigation Costs**.

If **Senior Counsel** advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within parameters which are reasonable (in **Senior Counsel**'s opinion and in the light of the matters he/she is required to consider), then **You**:

- a) must not (subject to the provisions herein under the heading "Your right to contest") object to **Our** attempts to settle the **Claim** within those parameters; and
- b) will be required to pay the relevant **Excess** specified in the **Schedule**.

#### 4.8 Payments to settle potential Claims

Any money **We** pay to settle a matter which might give rise to a **Claim** constitutes a payment to settle a **Claim** and is included towards the erosion of the **Sub-Limit of Liability** and/or the **Limit of Liability** under this **Policy**.

#### 4.9 Allocation

If a **Claim** or **Investigation** includes both matters which are covered and matters which are not covered by this **Policy**, the parties will seek to agree upon a fair and equitable allocation of **Loss**, costs and expenses between covered and uncovered matters.

If agreement cannot be reached:

- a) **We** will advance that portion of the **Loss**, costs and expenses, which **We** reasonably consider to be covered under this **Policy**, unless and until a different and final allocation is agreed between the parties or determined by a court or in accordance with paragraph b) below; and
- b) the allocation will be determined by, a **Senior Counsel** agreed between the parties (or, failing agreement, appointed by the President of the Law Society of the relevant jurisdiction), acting as an expert and not as an arbitrator, taking into account the submissions of both parties, and such determination will be final and binding.

The cost of **Senior Counsel**'s opinion will form part of the **Defence Costs** or **Investigation Costs**.

#### 4.10 Order of Payment

**We** will make payment of any amount covered by this **Policy** in the order in which they are presented to **Us** for payment.

However, if, after reasonable investigation, **We** become aware that the **Limit of Liability** or any applicable **Sub-Limit of Liability** may be insufficient to cover all payments owing under the **Policy**, **We** will first pay the entitlement of any applicable **Insured Person**.

After such payments, any remaining **Limit of Liability** or any applicable **Sub-Limit of Liability**, to which **You** are entitled under this **Policy** will be paid to **You**.

#### 4.11 Subrogation

In the event of any payment under this **Policy**, **We** will be subrogated to all of the **Insureds**' rights of recovery, indemnification and contribution.

The **Insured** must not prejudice **Our** rights under the **Policy** and will provide to **Us** all reasonably required assistance including but not limited to the execution of documents necessary to enable **Us** to adequately commence any action in the name of any **Insured**.

**We** will not exercise any available right of subrogation against an **Insured Person** under this **Policy** unless Exclusion 3.3 (Conduct) applies in respect of such **Insured Person**.

## 5. Limit of Liability

### 5.1 A. Limit Structure

**Our** liability under this **Policy** will be determined by the limit structure specified in the **Schedule**. All **Limits of Liability** and **Sub-Limits of Liability** are inclusive of **Defence Costs** and expenses.

#### Option 1 – Aggregate Limit

If the **Schedule** identifies that an **Aggregate Limit** applies, then:

- a) **Our** maximum aggregate liability under this **Policy** for all **Claims, Losses, Defence Costs, Self-Reports, Raids, Pre-Claim Inquiries, Investigations** and any other amounts payable under any Insuring Clause, extension or Endorsement will not exceed the **Limit of Liability** specified in the **Schedule**; and
- b) any **Sub-Limit of Liability** specified in the **Schedule**, or an Endorsement applies as part of, and not in addition to, that **Limit of Liability**.

#### Option 2 – Separate Limits

If the **Schedule** identifies that **Separate Limits** apply, then:

- a) each Insuring Clause shown as ‘Separate Limit’ in the **Schedule** is subject to its own **Limit of Liability**, as specified in the **Schedule**, which applies separately and independently, unless expressly stated otherwise;
- b) any **Sub-Limit of Liability** specified in the **Schedule** or an Endorsement applies as part of, and not in addition to the **Limit of Liability** for the relevant Insuring Clause, subject to paragraph c) below; and
- c) the total amount payable by **Us** under all **Limits of Liability** and **Sub-Limits of Liability** under this **Policy** will not exceed the **Aggregate Maximum Limit of Liability** specified in the **Schedule**.

### 5.1 B. Limit of Liability

- a) Subject to Clause 5.1A, (Limit Structure) **Our** maximum liability under this **Policy** for any one **Claim** or **Loss** (including **Defence Costs, Self-Reports, Raids, Pre-Claim Inquiries** or **Investigations** or other amounts) will not exceed the **Limit of Liability** specified in the **Schedule**.
- b) Cover provided under any Insuring Clause, extension, or Endorsement is subject to the **Limit of Liability** or any applicable **Sub-Limit of Liability** specified in the **Schedule** or an Endorsement. Any **Sub-Limit of Liability** is part of, and not in addition to, the **Limit of Liability**, unless expressly stated otherwise in accordance with Clause 5.1A (Option 2 – Separate Limits). **We** will have no liability in excess of a specified **Sub-Limit of Liability**.

### 5.2 Aggregation

For the purposes of this **Policy**, all **Claims, Self-Reports, Raids, Pre-Claim Inquiries, Investigations** or other matters arising from the same, related or continuous acts, facts, errors or omissions will be deemed to constitute a single **Claim** and will be deemed to have been first made in the earliest **Period of Insurance** in which any such **Claim** was first made.

Only one **Limit of Liability** and one **Excess** will apply to all **Claims** aggregated under this clause, unless specifically stated otherwise in this **Policy**.

### 5.3 Reinstatement

Subject to all terms, conditions and exclusions of this **Policy**, if the **Limit of Liability** for the **Period of Insurance** is exhausted by payments made by **Us** in respect of **Claims** or **Investigations** against **Insured Persons, We** agree to reinstate the **Limit of Liability** once for the remainder of the **Period of Insurance**, for the benefit of **Insured Persons** only.

The reinstated **Limit of Liability**:

- a) applies only to **Claims** made against **Insured Persons** and not to any other of **You**;
- b) applies only to **Loss, Defence Costs, Investigation Costs** and other amounts covered under this **Policy** which are incurred after the date of exhaustion of the original **Limit of Liability**, whether the relevant **Claim** was first made or the relevant **Investigation** first commenced before or after that date;
- c) is subject to the maximum amount specified in the **Schedule** (if any) as the reinstated **Limit of Liability**;
- d) is not cumulative with, and does not increase, any **Sub-Limit of Liability**; and
- e) is always in addition to any policy or policies providing coverage in excess of this **Policy** or any other policy, will only take effect after the total exhaustion of any amounts payable under any such excess or other policies.

For the avoidance of doubt, under Clause 5.1A (Option 2 – Separate Limits), any reinstatement pursuant to this clause will not increase the **Aggregate Maximum Limit of Liability**.

## 6. GST

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, will be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that **You** are entitled to claim an Input Tax Credit for a payment required to be made by **You** as an **Excess**, then the amount of the **Excess** will be net of **Your** entitlement to the Input Tax Credit.

- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** are, or will be, entitled to under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** would have been entitled to under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) had the payment been applied to acquire such goods, services or other supply.

## 7. General Conditions

### 7.1 Assignment

Except without **Our** prior written consent, any rights conferred to **You** under the **Policy** may not be assigned.

### 7.2 Authority

With respect to this **Policy**, the **Policyholder** will act on behalf of all **Insureds**. However, any **Insured Person** will not be precluded from notifying **Us** in accordance with the terms and conditions of this **Policy**.

### 7.3 Confidentiality

**You** must not, without **Our** prior written consent (which will not be unreasonably withheld), disclose the existence or terms of this **Policy** to any person except as required by law or court order or to **Your** professional advisers. However, **You** may, in **Your** annual report state that **You** have agreed a premium for the **Policy** but must not reveal the terms, **Us**, the **Limit of Liability**, or the **Premium** paid for this **Policy**.

### 7.4 Electronic Notices

**We** may issue notices as required by the *Insurance Contracts Act 1984* (Cth) by electronic mail or post.

### 7.5 Excess

**We** will only be liable to the **Insured** for such amount of any **Loss**, **Crime Loss** or other fees, costs and expenses in respect of any one **Claim**, **Self-Report**, **Raid**, **Pre-Claim Inquiry** or **Investigation** which exceeds the applicable **Excess** specified in the **Schedule** or any endorsement.

Only one **Excess** is payable in respect of any one **Claim**, **Self-Report**, **Raid**, **Pre-Claim Inquiry** or **Investigation**.

### 7.6 Financial Interest Liability

**We** will cover **You** to the extent that **Your** financial interest in a **Non-Admitted Insured** is impaired as a direct result of the **Non-Admitted Insured** incurring loss, liability or expense that would otherwise have been covered under this **Policy** if it had been incurred by **You**.

This clause only applies where **You** can demonstrate in writing that **You** have a financial interest in a **Non-Admitted Insured** at the time that the **Non-Admitted Insured** incurred loss, liability or expense during the **Period of Insurance**.

The agreed value of the impairment to **Your** financial interest is equal to the amount that would have been payable to the

**Non-Admitted Insured** concerned if it had been covered under the terms of this **Policy** (taking account of sums recoverable under any other policy and net of any recovery from third parties).

Where **Your** financial interest in the **Non-Admitted Insured** (as evidenced in writing) is less than one hundred percent (100%) the said agreed value will be reduced proportionately.

### 7.7 Governing Law

This **Policy** is governed by the laws of the Commonwealth of Australia, and the State or Territory where the **Policy** was issued (which is specified in the **Schedule**), the courts of which will have exclusive jurisdiction in any dispute or matters relating to the construction, validity or operation of this **Policy**.

### 7.8 Other Insurance

**You** must, as soon as reasonably possible, advise **Us** in writing of any insurance already affected or which may subsequently be affected covering, in total or in part and whether absolutely or contingently, the liability, **Claim**, **Loss** or **Investigation Costs**, or any part of them, covered by this **Policy**.

### 7.9 Payment in Australian Dollars

All amounts payable under this **Policy** will be paid in Australian dollars. Where any **Claim**, **Loss** or other amount is incurred in a currency other than Australian dollars, it will be converted into Australian dollars at the rate of exchange as published in the *Australian Financial Review* on the date the obligation to pay such **Claim** or **Loss** or other amount is established or, if not published on that date, on the date of the next publication.

### 7.10 Premium Payment

The cover **We** provide in this **Policy** is contingent upon full payment of the gross **Premium**. Otherwise, **We** may deduct any outstanding **Premium** from the amount **We** pay to **You** or on **Your** behalf.

### 7.11 Preservation of Rights to Indemnification

If **You** are legally required or permitted to indemnify an **Insured Person** for **Loss** or other amounts insured under this **Policy** but refuse or fail to do so within twenty-eight (28) days of receiving a written demand from the **Insured Person** for indemnification, then **We** will advance to the **Insured Person** all such payments above the applicable **Excess** and **You** must reimburse **Us** such **Excess** as soon as reasonably possible.

### 7.12 Severability, Rescission & Non-imputation

The **Proposal** will be construed as a separate **Proposal** for each **Insured** under this **Policy**.

This **Policy** is not avoidable, rescindable, in whole or in part.

No statement or representation by an **Insured Person** in the **Proposal**, or knowledge or information possessed by any **Insured Person**, will be imputed to any other **Insured Person** for the purpose of determining **Our** liability under this **Policy** in respect of any **Insured Person**.

**We** waive any rights under Section 28 of the *Insurance Contracts Act 1984* (Cth) **We** may have as a result of any non-fraudulent misrepresentation or non-fraudulent non-disclosure by any **Insured**.

**We** have the right to reduce **Our** liability under this **Policy** in the event of fraudulent non-disclosure or fraudulent misrepresentation by any **Insured** where it is established by final adjudication, or written admission by any **Insured Person**. However, **We** will only reduce **Our** liability in respect of an **Insured** if it is established by final adjudication or written admission by any **Insured Person** that such **Insured** was directly involved in or aware of such fraudulent non-disclosure or fraudulent misrepresentation.

### 7.13 Territorial & Jurisdiction Limits

Subject to Exclusion 3.8 (Sanctions), unless prohibited by law or regulations, cover under this **Policy** is not restricted by the location of where such matter giving rise to the **Claim** occurred.

### 7.14 The Policy Agreement

In consideration of payment of the **Premium** for this **Policy**, all **Insureds** and **We** agree that this **Policy**, including the Notices, **Schedule** and **Proposal** including any applicable Endorsements attaching to this **Policy** constitute the entire agreement between the parties. The **Policy**'s terms, conditions and exclusions can be waived or amended only by written Endorsement by **Us**.

## 8. Cancellation

- a) **You** may cancel this **Policy** at any time by giving written notice to **Us**. **We** will refund the **Policyholder** the pro-rata premium for the unexpired **Period of Insurance** from the date of cancellation; but no refund of premium will be made where:
  - (i) **You** or any **Insured** have notified **Us** of a **Claim** or any other matter for which the **Insured** is seeking cover under this **Policy**; or
  - (ii) as otherwise provided for under this **Policy**.
- b) **We** may also cancel this **Policy** in any of the circumstances permitted by the *Insurance Contracts Act 1984* (Cth). In the event of this **Policy** being cancelled by **Us**, a refund will be paid to the **Insured** for the pro-rata premium for the unexpired **Period of Insurance** from the date of cancellation subject to the exceptions set out in subsection a) above.

## 9. Definitions

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in Endorsements and in the **Schedule**.

### Policy Interpretation

Except where the context otherwise requires it:

- a) the singular includes the plural and the plural includes the singular;
- b) if a word or phrase is defined, its grammatical forms have a corresponding meaning;
- c) words importing a gender include every other gender.

### 9.1 Aggregate Maximum Limit of Liability

means the amount stated in the **Schedule** as the **Aggregate Maximum Limit of Liability** (if any).

### 9.2 Assets & Liberty Action

means any legal proceedings to obtain the discharge or revocation of an interim or interlocutory court order (including any appeals) by an **Official Body**, against an **Insured Person** in respect of the:

- a) confiscation, or freezing rights over real property and personal assets, or charge over such real property or personal assets;
- b) disqualification to hold office as a director or officer; or
- c) confinement to a specific residence or held in detention;

which arises in respect of a **Claim** or **Investigation**.

### 9.3 Assets & Liberty Expenses

means all direct reasonable costs and expenses by or on behalf of, an **Insured Person** to defend an **Assets & Liberty Action**.

### 9.4 Bail Bond & Civil Bond Expenses

means the reasonable payment or fee for any bond or other form of financial guarantee required by a court to guarantee an **Insured Person**'s contingent obligation for a specified amount hearing a **Claim**.

**Bail Bond & Civil Bond Expenses** does not include any collateral.

## 9.5 Change in Ownership

means:

- a) any entity, person or group of persons acting in concert (other than a **Subsidiary**) that becomes entitled to cast or control, more than fifty percent (50%) of the:
  - (i) composition of the board of directors of the **Policyholder**; or
  - (ii) shareholding or equity voting power of the **Policyholder**; or
- b) the **Policyholder** merges into or consolidates into another entity, disposing greater than fifty percent (50%) of its equity to any other entity, person or group of persons acting in concert.

## 9.6 Claim

means:

- a) a written demand for monetary, non-monetary, injunctive or equitable relief;
- b) any civil, regulatory or administrative proceeding including arbitration, mediation or any other alternative dispute resolution process, or counter claim;
- c) a criminal proceeding against an **Insured Person**;
- d) an **Investigation**; or
- e) specifically in respect of:
  - (i) Extension 2.2 (Assets & Liberty Safeguard), any **Assets & Liberty Action**;
  - (ii) Extension 2.10 (Enforceable Undertaking Expenses), any regulatory investigation within the scope of this extension; or
  - (iii) Extension 2.12 (Extradition Expenses), any **Extradition Event**.

## 9.7 Confiscation Expenses

means the expenses incurred by an **Insured Person** in connection with a **Confiscation Order** for their:

- a) dependent children's schooling costs;
- b) monthly rent or mortgage, and utility costs for the primary residence of the **Insured Person**; and
- c) personal insurance premiums including home and contents, life, health insurance,

where such expenses are owing or contracted by such **Insured Person**, prior to the **Confiscation Order**, and will cease:

- d) upon discharge or revocation of the **Confiscation Order**; or
- e) twelve (12) months following the making of the **Confiscation Order**.

## 9.8 Confiscation Order

means an order of an **Official Body** resulting in the:

- a) confiscation, or freezing rights, suspension or assuming ownership; or
- b) the placement of a charge,

over such real property or personal assets of an **Insured Person** made in the context of an **Assets & Liberty Action**.

## 9.9 Computer System

means any computer, hardware, software, firmware, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, including SCADA and ICS systems, owned or operated by the **Insured** or any other party.

## 9.10 Court Attendance Costs

means an allowance of \$1,000 per day for any **Insured Person** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding, including an Inquiry.

## 9.11 Crime Loss

means the direct financial loss, measured at the actual market value, sustained by **You** in respect of **Property** owned by **You** or in the care, custody or control of **You** and for which **You** are legally liable, caused by **Criminal Conduct**.

## 9.12 Criminal Conduct

means any fraudulent or dishonest single, continuous or repeated act or series of acts committed by any **Insured Person** or third party on or after the **Retroactive Date**, whether acting alone or in collusion with any other **Insured Person**, to cause a **Crime Loss** to **You**.

## 9.13 Crisis Loss

means any one of the following unforeseen events which, in the reasonable professional opinion of the managing director or chief executive officer of the corporation, has the potential to cause an imminent decrease of more than thirty percent (30%) of the total consolidated annual revenues of the corporation if left unmanaged:

- a) the loss of the corporation's intellectual property rights, including patents, trademarks or copyrights, that were previously acquired by the corporation;
- b) the loss of a major customer or major contract of the corporation;
- c) the recall of any product manufactured, produced, packaged or distributed by the corporation, due to its potential to cause property damage or bodily injury to others;

- d) any act occurring on the premises of the corporation that results in the death or injury of an insured person, or causes emotional distress to an insured person or customer of the corporation who witnesses such act;
- e) any destruction of, or damage to, tangible property belonging to the corporation, not caused by a natural disaster.

**Crisis Loss** does not include any event that affects the **Insured's** industry in general rather than the **Insured** directly.

#### 9.14 Crisis Loss Expenses

means the reasonable and necessary fees, costs and expenses paid by the **Insured** for external crisis management services provided in response to a **Crisis Loss** and incurred within the first thirty days after a **Crisis Loss**.

#### 9.15 Cyber Act

means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

#### 9.16 Cyber Incident

means

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

#### 9.17 Defence Costs

means reasonable fees, costs and expenses incurred in the defence, investigation, settlement or appeal of any **Claim** covered by this **Policy**.

**Defence Costs** do not include **Your** salaries, overheads, benefits or other costs.

#### 9.18 Employment Practices Violation

means any actual or alleged act, error or omission in respect of the employment or prospective employment of any past, present or future employee or **Insured Person** of **You** in connection with any wrongful, unlawful or unfair:

- a) dismissal 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 against a whistleblower in connection with **You**;
- h) employment-related wrongful infliction of mental anguish or emotional distress.

#### 9.19 Excess

means the amount specified in the **Schedule** that **You** will be required to pay for each and every **Claim**.

#### 9.20 Extradition Event

means the service on an **Insured Person** of an extradition order in connection with a **Wrongful Act**, provided that such order is first served on the **Insured Person** and notified to **Us** during the **Period of Insurance** or any applicable **Runoff Period**.

#### 9.21 Extradition Expenses

means all direct reasonable costs and expenses to defend an **Extradition Event**.

#### 9.22 Forensic Investigation Expenses

means all reasonable costs and expenses incurred by **You** for the purpose of investigating, substantiating, and calculating any covered or potentially covered **Crime Loss**.

**Forensic Investigation Expenses** include the costs of preparing a report to **Us** into:

- a) the cause and quantum of any **Crime Loss**;
- b) the adequacy of **Your** controls in respect of a **Crime Loss**;
- c) improvements which may be made to **Your** controls in order to prevent any similar future **Crime Loss**.

**Forensic Investigation Expenses** do not include **Your** salaries, overheads, benefits or other costs.

#### 9.23 Identity Fraud Expenses

means all reasonable costs and expenses incurred by **You** in relation to a **Claim** under Extension 2.17 (Identity Fraud Cover).

#### 9.24 Insured

means **You** and any **Insured Person**.

## 9.25 Insured Person

means a natural person, who is a past, present or future:

- a) director, shadow director or de-facto director of **You**;
- b) prospective director named in **Your** prospectus or similar offering document;
- c) officer, senior manager, general counsel, company secretary, risk manager, controller, chancellor or governor of **You**, or any other natural person who is involved with and takes part in the management of **You**;
- d) committee member, of a committee established by or approved by **Your** board of directors;
- e) trustee or policy committee member of a superannuation fund established for the benefit of **Your** employees; or
- f) full-time, part-time, casual, seasonal or temporary employee of **You**, who performs work under a contract of service, or who is undertaking work experience, where **You** have the right to direct and control the performance of such services, and who is remunerated by salary, wages and/or commissions; or
- g) independent contractor, volunteer or natural person seconded to **You**, provided such individual is acting under the direction and supervision of **You** and **You** provide indemnification to that individual in the same manner as applies to those individuals referred to in paragraph (f) above;

but only when and to the extent that such **Insured Person** is acting for and on behalf of **You** in any of the capacities referred to in clauses 9.25 (a) to (g) above.

In respect of any **Wrongful Act**, the definition of **Insured Person** is extended to include any:

- a) spouse or domestic partner; or
- b) heirs, legal representatives, administrator, or executor of an incompetent, deceased, insolvent or bankrupt estate,

of such **Insured Person**.

**Insured Person** does not include any of **Your** external auditors, receivers, administrators, liquidators, managers, mortgagee in possession or similar.

## 9.26 Insurer

means XL Insurance Company SE, Australia Branch  
ABN 36 083 570 441

## 9.27 Investigation

means any hearing, examination, investigation, or inquiry (including any requirement to produce documentation) by an **Official Body** into the affairs of an **Insured** in their capacity as such first commenced or convened during the **Period of Insurance**, where:

- a) it is notified to **Us** during the **Period of Insurance** (or any applicable **Runoff Period**); and

- b) an **Insured Person** is required to, respond to, attend, is questioned or required to produce documentation.

An **Investigation** does not include any part of any routine or regular audit, inspection, oversight, or compliance activities or similar.

## 9.28 Investigation Costs

means the reasonable cost and expenses incurred by or on behalf of an **Insured Person** for the purpose of preparing for, attending, cooperating with or being represented at any **Investigation**.

**Investigation Costs** does not include any remuneration, overheads, benefits, or cost of their time, of any **Insured**.

## 9.29 Known Circumstance

means any fact, situation, or circumstance of which:

- a) any of **You** were aware at any time prior to the inception of this **Policy** or before this **Policy** was amended or endorsed; or
- b) are related to facts alleged or the same or similar related **Wrongful Acts** alleged or contained in any **Claim** which has or could have been notified as a circumstance in any prior policy of which this is a renewal or replacement thereof,

that may result in someone making an allegation against **You** in respect of a liability or **Loss** that might be covered by this **Policy** or any endorsement of this **Policy**.

## 9.30 Limit of Liability

means the 'Limit of Liability' specified in the **Schedule**.

## 9.31 Loss

means any amounts legally liable to be paid by the **Insured** in relation to **Claims** made against an **Insured** including:

- a) **Defence Costs**;
- b) the award of damages, costs, settlements, or pre and post covered judgment interest; or
- c) compensatory, punitive, aggravated, exemplary and multiple damages.

**Loss** is extended to include:

- a) **Assets & Liberty Expenses**;
- b) **Extradition Expenses**;
- c) **Investigation Costs**;
- d) **Bail Bond & Civil Bond Expenses**;
- e) **Prosecution Costs**; and
- f) expenses incurred in relation to Extension 2.6 (Court Attendance Costs) and Extension 2.23 (Public Relations Expenses).

**Loss** does not include:

- a) **Your** taxes, except GST where **You** are not entitled to an input tax credit;
- b) remuneration or employment related benefits;
- c) payments for amounts that **We** are prohibited at law from paying; or
- d) such amounts issued by a pension regulator in respect of any pension scheme pursuant to a financial support direction or contribution notice.

### 9.32 Non-Admitted Insured

means a subsidiary of a **Named Insured** to the extent that insurance of that subsidiary under this **Policy** would expose either **Us**, **You** or the **Non-Admitted Insured** to legal or regulatory sanction. To the extent it is a **Non-Admitted Insured** such subsidiary is not insured and does not have any rights under this **Policy**.

### 9.33 Official Body

means any regulator, authority, body, or any other person or entity with the legal authority to conduct an **Investigation**.

### 9.34 Outside Entity

means any other entity, other than **You**, provided that such entity is not:

- a) a pension or superannuation fund, trust or scheme;
- b) a special purpose entity (SPE), special purpose vehicle (SPV), structure investment vehicle (SIV) or a special purpose acquisition company (SPAC);
- c) listed on any exchange in the United States of America or any of its territories,

unless such entity in clause a) - c) above is specifically endorsed to this **Policy**.

### 9.35 Outside Entity Director

means any natural person who is a past, present or future director, officer, trustee or equivalent position in an **Outside Entity**, held at **Your** specific request but only when such person is acting in such capacity in the applicable **Outside Entity**.

### 9.36 Pre-Claim Inquiry

means after commencement of the **Period of Insurance**:

- a) where a written request for an **Insured Person**, to appear, respond or attend, or to produce documentation is made by **You**, or **Your** board of directors; and
- b) which was first made and notified to **Us** during the **Period of Insurance** (or any applicable **Runoff Period**); and

c) that arises out of:

- (i) an **Official Body** inquiry or **Investigation** pertaining to **You** or an **Insured Person**; or
- (ii) an alleged **Wrongful Act** by an **Insured Person** after written notification to an **Official Body**.

**Pre-Claim Inquiry** does not include any part of any routine or regular audit, inspection, oversight, internal supervision or compliance activities, request for mandatory information or similar, conducted in any business-as-usual review, or compliance process.

### 9.37 Property

for the purpose of Definition 9.11 (Crime Loss) only, means:

- a) local or foreign currency, coins, bank notes, bullion cheques, postal orders and money orders; or
- b) shares, stock, bearer instruments, derivatives, bonds, warrants, debentures, rights under a depository receipt or other securities (or interests in it) of whatever nature; or
- c) any tangible property, excluding buildings and their fixtures & fittings, petrol and petroleum products.

### 9.38 Policy

means the insurance contract made up of:

- a) this document;
- b) the **Schedule**; and
- c) the endorsements, if any, contained or referred to in the **Schedule** or otherwise attaching to this **Policy**.

### 9.39 Policyholder

means the entity expressly identified in the **Schedule** as the **Policyholder**.

### 9.40 Pollutants

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

### 9.41 Period of Insurance

means the 'Period of Insurance' specified in the **Schedule** – being the period between the inception date of this **Policy** and the expiry date of this **Policy** at 4.00 PM. The time being determined at the place where the **Policy** was issued.

### 9.42 Premium

means the amount specified as such in the **Schedule** that **You** have agreed to pay.

### 9.43 Prosecution Costs

means all direct reasonable costs and expenses incurred by or on behalf of an **Insured Person** to bring legal proceedings for a declaration, an injunction, or both in connection with any **Assets & Liberty Action**.

### 9.44 Proposal

means the written proposal form together with any other material which was given to **Us** by or on **Your** behalf, and relied on by **Us** to effect this **Policy**.

### 9.45 Publicity Campaign

means a public relations campaign designed and implemented by an external public relations consultant.

### 9.46 Raid

means any raid or onsite visit to **Your** premises by an **Official Body**, where an **Insured Person** is interviewed or required to produce, review, copy documents related to **Your** business, or the removal of any such documents, which takes place after the commencement of the **Period of Insurance** and which was first notified to **Us** during the **Period of Insurance**.

### 9.47 Retroactive Date

means the date specified as the **Retroactive Date** in the **Schedule**.

### 9.48 Runoff Period

means the period provided by Extension 2.25 (Runoff Period) or Extension 2.26 (Runoff Period for Retired Insured Persons) immediately following the expiry of the **Period of Insurance** during which written notice may be given to **Us** of a:

- a) **Claim** or, Self- Report first made;
- b) **Raid, Pre-Claim Inquiry** or **Investigation** first commenced; or
- c) **Crime Loss** or fraudulent representation within the scope of Extension 2.17 (Identity Fraud Cover) first discovered;

during such period, but only to the extent that such **Claim, Self-Report, Raid, Pre-Claim Inquiry, Investigation, Crime Loss** or representation results from a **Wrongful Act, Employment Practices Violations, Criminal Conduct** or other act, error, omission or conduct that occurred prior to the expiry of the **Period of Insurance**.

### 9.49 Securities

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

### 9.50 Self-Report

means a written notification to an **Official Body** of an alleged **Wrongful Act** in respect of the affairs of any **Insured** which occurs after the commencement of the **Period of Insurance** and notified to **Us** during the **Period of Insurance** (or any applicable **Runoff Period**).

**Self-Report** does not include any part of any routine or regular audit, inspection, oversight, or compliance activities or similar.

### 9.51 Senior Counsel

means a barrister in active practice who is entitled to use the post-nominals KC or SC in any one or more superior court in the Commonwealth of Australia.

### 9.52 Schedule

means the schedule to this **Policy** wording, which is issued by **Us**.

### 9.53 Social Engineering Fraud

means the voluntary transfer, payment, or delivery of money, securities, or other tangible property by an **Insured Person** in response to any fraudulent, misleading, or deceptive instruction, communication, or impersonation.

### 9.54 Statutory Liability

means any civil fine, or pecuniary penalty for which **You** are legally liable under any act of parliament, regulation or other legislative instrument enacted in Australia or New Zealand.

**Statutory Liability** does not include:

- a) amounts **We** are prohibited from paying at law in Australia or New Zealand;
- b) amounts representing damages or compensation;
- c) compliance, remedial, reparation, or restitution costs;
- d) pure economic loss or consequential losses; or
- e) taxes, duties, excises, fine or penalties resulting from the failure to pay tax or inclusive of any interest.

### 9.55 Sub-Limit of Liability

means the limit of cover for each of the specific types of cover identified in this **Policy** as being subject to a **Sub-Limit of Liability**, as specified in the **Schedule**.

### 9.56 Subsidiary

means any company or other incorporated entity which, under Australian law, is or was a subsidiary of any incorporated body identified in the **Schedule** at any time during or before the **Period of Insurance**, subject to any limitations or qualifications contained in Extension 2.20 (New Subsidiary Cover).

Cover applies only in respect of any **Wrongful Act, Employment Practices Violation, Criminal Conduct** or other conduct committed or allegedly committed while the entity was a **Subsidiary** of the **Policyholder**.

### 9.57 Tax Audit Costs

means the reasonable fees paid to accountants or registered tax agents for advising **You** on and responding on **Your** behalf to a **Tax Audit Notice**.

**Tax Audit Costs** do not 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.

### 9.58 Tax Audit Notice

means formal notice from a tax authority in Australia relating to a specific return filed by the **Policyholder** as to its liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services) Tax, superannuation payments tax, termination payments tax or sales tax (including the amount of any such tax).

### 9.59 Terrorism

means any act, or preparation in respect of action, or threat of action designed to influence the government, whether de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

### 9.60 You / Your

means the **Policyholder** or any **Subsidiary**.

### 9.61 We or Us or Our

means Pacific Indemnity Underwriting Solutions Pty Ltd ACN 606 511 639 on behalf of the **Insurer**.

### 9.62 Wrongful Act

means any actual or alleged act, error or omission, misstatement, neglect, breach of duty, or breach of warranty of authority by:

- a) **You**; or
- b) any **Insured Person** committed solely in his or her capacity as an **Insured Person** and in the course of his or her duties to **You**.