



Association Liability Policy

Version HOST ASL 0416 2nd ed

Hostsure Underwriting Agency Pty Ltd

ABN 44 108 154 829

Australian Financial Services Licence No. 268726

IMPORTANT INFORMATION

Please read the following information

For the purposes of the Important Information section all references to:

- 'you' or 'your' has the same meaning as the INSURED and INSURED PERSONS as defined in the Definitions and Interpretations section of the policy wording;
- 'we', 'our', 'us' or 'Insurer', has the same meaning as WE/OUR/US/INSURER as defined in the Definitions and Interpretations section of the policy wording.

A. GENERAL INSURANCE CODE OF PRACTICE

We proudly support the General Insurance Code of Practice. The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

For further information on the Code, please visit www.codeofpractice.com.au

B. THE AGENT

Hostsure Underwriting Agency Pty Ltd (ABN 44 108 154 829, AFSL 268726) ('Hostsure') arranges policies for and on behalf of the Insurer. Hostsure acts under a binding authority given to it by us, to administer and issue policies, alterations and renewals. In all aspects of arranging this policy, Hostsure acts as an agent for the Insurer and not for you.

You can contact Hostsure by:

Address: Level 5, 97-99 Bathurst Street, Sydney NSW 2000

Postal Address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6600

Fax: +61 2 9307 6699

C. YOUR DUTY OF DISCLOSURE

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

D. CLAIMS MADE AND NOTIFIED POLICY

This policy provides Associations Liability Insurance on a “Claims Made and Notified” basis. This means that the policy covers you for claims made against you and notified to the Insurer during the period of cover. It does not provide cover for:

- claims arising from an event which occurred before the policy’s “retroactive date” where such a date is specified in the schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the period of cover);
- claims made, threatened or intimated before the period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy;
- claims arising from circumstances noted on the proposal form or any previous proposal form.

E. SUBROGATION AGREEMENTS

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

F. PRIVACY STATEMENT

In this Privacy Statement the use of ‘we’, ‘us’ and ‘our’ means the Insurer and Hostsure unless specified otherwise.

We are committed to protecting your privacy.

We need to collect, use and disclose your personal information (which may include sensitive information) in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim. You can choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

The primary purpose for our collection and use of your personal information is to enable us to provide insurance services to you.

Personal Information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from your insurance intermediary or co-insureds). If you provide personal information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us;
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

We may disclose the personal information we collect to third parties who assist us in providing the above services, such as related entities, distributors, agents, insurers, reinsurers and service providers. Some of these third parties may be located outside of Australia. In all instances where personal information may be disclosed to third parties who may be located overseas, we will take reasonable measures to ensure that the overseas recipient holds and uses your personal information in accordance with the consent provided by you and in accordance with our obligations under the *Privacy Act 1988* (Cth).

In dealing with us, you consent to us using and disclosing your personal information as set out in this statement. This consent remains valid unless you alter or revoke it by giving written notice to Hostsure's Privacy Officer. However, should you choose to withdraw your consent, we may not be able to provide insurance services to you.

Hostsure's Privacy Policy which is available at www.hostsure.com.au or by calling Hostsure, sets out how:

- Hostsure protects your personal information;
- you may access your personal information;
- you may correct your personal information held by us;
- you may complain about a breach of *the Privacy Act 1988* (Cth) or Australian Privacy Principles or and how Hostsure will deal with such a complaint.

If you would like additional information about privacy or would like to obtain a copy of the Privacy Policy, please contact Hostsure's Privacy Officer by:

Postal Address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6656

Fax: +61 2 9307 6699

Email: privacyofficer@steadfastagencies.com.au

You can download a copy of Hostsure's Privacy Policy by visiting www.hostsure.com.au

G. DISPUTE RESOLUTION PROCESS

Any enquiry or complaint relating to this insurance should be referred to Hostsure in the first instance.

Please contact Hostsure by:

Postal Address: PO Box A2016, Sydney South NSW 1235

Phone: +61 2 9307 6653

Fax: +61 2 9307 6699

Email: servicefeedback@steadfastagencies.com.au

If Hostsure require additional information, Hostsure will contact you to discuss. If your complaint is not immediately resolved Hostsure will respond within 15 business days of receipt of your complaint or agree a reasonable appropriate timeframe to respond.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you can contact Lloyd's Australia Limited:

Address: Level 9, 1 O'Connell St, Sydney NSW 2000

Phone: + 61 2 8298 0783

Fax: + 61 2 8298 0788

Email: ldraustralia@lloyds.com

who will refer your dispute to Policyholder & Market Assistance at Lloyd's who will respond to your complaint within 15 business days, unless an alternative timetable has been agreed with you.

Complaints that can not be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

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INSURING CLAUSES

1.1 Insuring Clauses

1.1.1 OFFICE BEARER'S Liability

WE shall pay on behalf of the INSURED PERSONS up to the INDEMNITY LIMIT for the amount of any CLAIM including claimant's costs and expenses first made against the INSURED PERSONS and notified to US during the POLICY PERIOD in respect of any WRONGFUL ACT by the INSURED PERSONS in the capacity of an OFFICE BEARER of the INSURED.

1.1.2 Association Reimbursement

WE shall pay on behalf of the INSURED up to the INDEMNITY LIMIT for the amount of any CLAIM including claimant's costs and expenses first made against the INSURED PERSONS and notified to US during the POLICY PERIOD in respect of any WRONGFUL ACT by the INSURED PERSONS in the capacity of an OFFICE BEARER of the INSURED, but only when the INSURED shall be required or permitted to indemnify the INSURED PERSONS pursuant to law, or by reason of any indemnity clause in the trust deed, constitution or memorandum or articles of association of the INSURED.

1.1.3 Professional Indemnity

WE shall indemnify the INSURED and/or INSURED PERSONS up to the INDEMNITY LIMIT for the amount of any CLAIM including claimant's costs and expenses first made against the INSURED and/or INSURED PERSONS and notified to US during the POLICY PERIOD in respect of any WRONGFUL ACT causing a breach of professional duty by the INSURED and/or the INSURED PERSONS in the course of providing the PROFESSIONAL SERVICES on behalf of the INSURED.

1.1.4 Associations Liability

WE shall pay on behalf of the INSURED up to the INDEMNITY LIMIT for the amount of any CLAIM including claimant's costs and expenses first made against the INSURED and notified to US during the POLICY PERIOD in respect of any WRONGFUL ACT committed by an the INSURED.

1.1.5 Investigations and Inquiries

WE shall pay on behalf of the INSURED and/or INSURED PERSONS for legal costs and expenses up to the INDEMNITY LIMIT necessarily incurred with OUR prior written consent directly arising out of:

- (a) any official investigation, examination, inquiry or other proceedings in respect of any WRONGFUL ACT ordered or commissioned by any relevant professional body or institute; or
 - (b) any breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation in respect of any WRONGFUL ACT;
- first instituted or made against the INSURED and notified to US during the POLICY PERIOD.

1.2 DEFENCE COSTS

WE shall also pay on behalf of the INSURED for DEFENCE COSTS where such costs have been incurred with OUR prior written consent (such consent not to be unreasonably withheld or unreasonably delayed).

DEFENCE COSTS are part of the INDEMNITY LIMIT and will not be payable in addition to the INDEMNITY LIMIT.

AUTOMATIC EXTENSIONS

WE shall provide the following additional cover PROVIDED ALWAYS THAT:

- (a) the cover provided by each Automatic Extension is subject to the SCHEDULE, Insuring Clauses, Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- (b) the inclusion of any Automatic Extension shall not increase the INDEMNITY LIMIT.

2.1 Competition and Consumer Act and other legislation

The cover provided by this policy extends to any CLAIM which arises out of conduct in contravention of the *Competition and Consumer Act 2010* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth) or any State or Territory Fair Trading legislation but only where such conduct:

- 2.1.1 constitutes a contravention of such statute because it:
 - (a) is misleading or deceptive or likely to mislead or deceive; or
 - (b) is the making of a false or misleading representation; or
 - (c) is unconscionable; or
 - (d) is in breach of a warranty implied into a contract for the provision of services by any of the above Acts; and
- 2.1.2 is not intentional.

The cover provided by this extension is not subject to Exclusion 5.14.1.

2.2 Loss of or Damage to DOCUMENTS

In the event of physical loss of or damage to DOCUMENTS which are the property of the INSURED or are in the INSURED's care, custody or control and such loss occurs and is notified to US during the POLICY PERIOD, the INSURED is indemnified, in addition to any cover provided by insuring clauses 1 and 2 in respect of such event, for reasonable and necessary costs and expenses incurred by the INSURED (although not the INSURED's own time) in replacing, restoring or reconstituting such DOCUMENTS.

The cover provided by this extension is not subject to the Insuring Clauses or Exclusion 5.5.

2.3 Dishonesty of EMPLOYEES

The cover provided by this policy shall extend to any CLAIM brought about, or contributed to, by the dishonest, fraudulent, criminal or malicious act or omission of any person at any time employed by the INSURED provided that:

- 2.3.1 there is no indemnity in respect of any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- 2.3.2 there is no indemnity in respect of any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
- 2.3.3 no indemnity shall be provided to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.4 the INSURED shall, at the request and expense of US take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance;
- 2.3.6 the person who committed the dishonest, fraudulent, criminal or malicious act or omission was not a principal, partner or director of the INSURED;
- 2.3.7 the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;

2.3.8 nothing herein shall preclude US from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

The cover provided by this extension is not subject to Exclusion 5.11.

2.4 Present or Former Principals, EMPLOYEES and Others

The cover provided by the policy shall extend to all present and former partners, principals, directors and EMPLOYEES of the INSURED in the same manner as if they were the INSURED.

2.5 Defamation, Libel and Slander

The cover provided by this policy shall extend to any CLAIM in direct consequence of any defamation, libel or slander by the INSURED arising out of the conduct of the INSURED's business activities.

2.6 Infringement of Copyright or Patents

The INSURED is indemnified for reasonable legal costs and expenses incurred with OUR prior written consent (not to be unreasonably withheld) in the investigation, defence or settlement of any CLAIM or proceedings first made against the INSURED and notified to US during the POLICY PERIOD seeking injunctive or other non-compensatory relief in respect of an inadvertent infringement or alleged infringement of any copyright or patents or other intellectual property rights arising out of the conduct of the INSURED's business activities.

The cover provided by this extension is not subject to the Insuring Clauses or Exclusion 5.14.2.

2.7 Outside Directorships (including run off cover)

The INSURED and INSURED PERSONS are indemnified for any CLAIM first made against an INSURED PERSON who was, is or becomes at the written request of the INSURED a director officer or equivalent position in any OUTSIDE ENTITY.

Coverage afforded under this extension shall be specifically in excess of any indemnity provided by the OUTSIDE ENTITY as well as any insurance contract in force or available from the OUTSIDE ENTITY.

2.8 Spousal Liability Cover

The SPOUSE of an INSURED PERSON is indemnified by US for any CLAIM first made against the SPOUSE during this POLICY PERIOD arising out of a WRONGFUL ACT committed by the INSURED PERSON so long as the CLAIM is only made because the SPOUSE is the spouse of the INSURED PERSON and relates to property either held as joint tenants or property that was transferred to the SPOUSE by the INSURED PERSON solely for lawful purposes.

2.9 Continuous Coverage

The cover provided by this policy shall extend to any CLAIM arising from any fact, matter or circumstance known to the INSURED, at any time prior to the inception of this policy, and which the INSURED knew or a reasonable person in the INSURED'S profession could, in the circumstances, be expected to know might give rise to a CLAIM against the INSURED PROVIDED ALWAYS THAT:

- (a) WE were the Association Liability insurer of the INSURED when the INSURED first became aware of such fact, matter or circumstance; and
- (b) WE continued without interruption to be the Association Liability insurer of the INSURED from the time mentioned in paragraph 2.9 (a) above up until this policy came into effect; and
- (c) had WE been notified by the INSURED of such fact, matters or circumstance when the INSURED first became aware of it, the INSURED would have been covered under the policy in force at that time but is not now entitled to be covered by that policy because it did not notify the fact, matter or circumstance; and

- (d) neither the CLAIM nor the fact, matter or circumstance has previously been notified to US or to any other insurer. If the INSURED was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Cover extension does not apply; and
- (e) the INDEMNITY LIMIT provided for CLAIMS covered by this Extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (c) above, or under this policy. The terms of this policy otherwise apply.

The cover provided by this extension is not subject to Exclusion 5.1.2.

2.10 Appointed Sub-Consultants

The cover provided by this policy shall extend to any CLAIM against the INSURED in respect of the INSURED's civil liability directly arising out of the conduct of any appointed sub-consultant in the course of the exercise and conduct of the INSURED's business activities.

2.11 Newly created or acquired subsidiaries

The cover provided by this policy shall extend to indemnify, in the same manner and to the same extent as the INSURED, any entity or subsidiary acquired or created by the INSURED during the POLICY PERIOD. PROVIDED ALWAYS THAT:

- 2.11.1 the POLICY PERIOD applicable to such cover shall be the period commencing on the date of such acquisition or creation and expiring on the expiry date of the POLICY PERIOD; and.
- 2.11.2 the retroactive date applicable to such cover shall be the date of acquisition or creation of the entity or subsidiary.

2.12 Run-Off cover

WE agree that in the event that an INSURED entity or subsidiary ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this policy with respect to such INSURED entity or subsidiary shall continue until the expiry date of the POLICY PERIOD. PROVIDED ALWAYS THAT such coverage shall only apply in respect of CLAIMS arising out of acts, errors or omissions occurring prior to the effective date on which such INSURED entity or subsidiary ceased to exist or operate or was consolidated with, merged into or acquired by another entity, unless otherwise agreed in writing by US.

2.13 Severability relating to the INSURED

WE agree that where this policy names more than one INSURED in the SCHEDULE, any conduct on the part of an INSURED named in the SCHEDULE whereby such INSURED:

- 2.13.1 failed to comply with the duty of disclosure in terms of the *Insurance Contracts Act 1984* (Cth); or
- 2.13.2 made a misrepresentation to US before this contract of insurance was entered into, shall not prejudice the right of any other INSURED named in the SCHEDULE to indemnity as may be provided by this policy. PROVIDED ALWAYS THAT:
 - (a) such other INSURED, its directors or EMPLOYEES shall be entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard shall be upon the INSURED;
 - (b) such other INSURED shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise US in writing of all known facts in relation to such conduct; and
 - (c) enquiry has been made, before the contract of insurance was entered into with US, of each INSURED and persons who make up the INSURED for the purposes of complying with the duty of disclosure under the *Insurance Contracts Act 1984* (Cth).

For the sake of clarity, this provision is not intended to limit the INSURED's duty of disclosure owed by the entities or persons that make up the INSURED.

2.14 Estates and Legal Representatives

WE agree to include in the definition of the INSURED the estate, heirs, legal representatives or assignees of the INSURED in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such INSURED in respect of any civil liability of the INSURED that would have been covered by Clause 1.1 or 1.2 if the INSURED was alive, had capacity or was not insolvent or bankrupt PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this policy insofar as they can apply.

2.15 Advancement of DEFENCE COSTS

In respect of Insuring Clause 1.1.1 Directors & Officers Liability if WE do not exercise OUR rights under Claims Condition 3.3 to take over the conduct of the CLAIM on behalf of the INSURED PERSONS and providing that WE have not denied the CLAIM then WE will advance DEFENCE COSTS in accordance with Clause 1.2 above.

If it is subsequently shown that the INSURED PERSON was not entitled to indemnity under this policy then WE retain the right to seek recovery of the DEFENCE COSTS advanced.

2.16 Fines and Penalties

To the extent permitted by law WE shall indemnify an INSURED PERSON for any fine or penalty that the INSURED PERSON is liable for because of a conviction under LEGISLATION or damages or compensation for which they become liable directly as a result of criminal or civil proceedings for a WRONGFUL ACT where criminal or civil proceedings were first issued against the INSURED PERSON and notified to US during the POLICY PERIOD.

However no indemnity is provided under this extension for any INSURED PERSON that failed to comply with any lawful order, notice, demand, determination, judgment, memorandum or similar finding under any LEGISLATION in connection with the penalty or fine.

OUR total aggregate liability under this extension shall not exceed \$250,000 in all for the POLICY PERIOD, which amount is part of, and not in addition to the INDEMNITY LIMIT.

An excess of \$5,000 applies to each and every penalty or fine.

2.17 Public Relations Expenses

Cover is extended to the reasonable and necessary fees, costs and expenses incurred by or with the prior written consent of US by or on behalf of an INSURED PERSON in the design and implementation of a publicity campaign to prevent or mitigate damage to the reputation of any INSURED PERSON of any INSURED arising from a covered or potentially covered CLAIM against that INSURED PERSON. The cover provided under this Extension is not subject to an EXCESS.

2.18 Presumptive Indemnification

In the event and to the extent that the INSURED is legally permitted or required to indemnify any INSURED PERSON in respect of a CLAIM, but for whatever reason fails or refuses to do so, then WE shall pay on behalf of the INSURED PERSON such CLAIM. In such event, the EXCESS applicable to the Indemnity Cover shall be paid by the INSURED to US.

2.19 CRISIS LOSS

WE shall pay the INSURED for CRISIS LOSS from a CRISIS event during the POLICY PERIOD. The cover provided under this Extension is not subject to an EXCESS.

2.20 Membership Limit

Cover is extended to any liability from a CLAIM made against any INSURED, or any OFFICE BEARER or EMPLOYEE of any INSURED, by a MEMBER of the INSURED based upon any WRONGFUL ACT in connection with membership promotion, membership rights or the termination or suspension of membership, including, but not limited to, any harassment, or discrimination.

2.21 Taxation Disputes

If the INSURED retains a qualified accountant or registered tax agent to manage their tax affairs, cover is extended to and the term "DEFENCE COSTS" shall include TAX AUDIT COSTS and TAX STATUS COSTS. TAX AUDIT COSTS shall not be subject to an EXCESS.

2.22 Reinstatement of the INDEMNITY LIMIT

If the INDEMNITY LIMIT is partially reduced or exhausted by any CLAIM or DEFENCE COSTS then WE agree to reinstate the INDEMNITY LIMIT for any CLAIMS covered by the Insuring Clauses in 1.1 and DEFENCE COSTS that are totally unrelated or unconnected to the CLAIM that reduced or exhausted the INDEMNITY LIMIT, PROVIDED ALWAYS THAT in the aggregate for all CLAIMS and DEFENCE COSTS (subject to whether the DEFENCE COSTS are inclusive or in addition as per Clause 1.2) WE shall be liable for no more than twice the INDEMNITY LIMIT.

2.23 Fidelity

WE agree to provide indemnity to the INSURED against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the INSURED or for which the INSURED is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any person employed by the INSURED. PROVIDED ALWAYS THAT:

- 2.23.1 such loss is first discovered by the INSURED during the POLICY PERIOD and is notified in writing to US within twenty-eight days of the date of such discovery (but never beyond the expiry date of the POLICY PERIOD);
- 2.23.2 there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- 2.23.3 no indemnity in respect of such loss shall be afforded hereunder to any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.23.4 the INSURED shall, at the request and expense of US take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.23.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the INSURED to the person committing such act, or any monies held by the INSURED and belonging to such person, shall be deducted from any amount payable under this insurance;
- 2.23.6 the sums payable hereunder shall only be for the balance of liability in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 2.23.7 the EXCESS is also applicable to each and every loss incurred by the INSURED and is costs inclusive;
- 2.23.8 nothing herein shall preclude US from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.23.9 the person who committed the dishonest or fraudulent act or omission was not a principal, partner or director of the INSURED;
- 2.23.10 the maximum amount payable under this extension is \$100,000 which is part of the total INDEMNITY LIMIT and not in addition.

The cover provided by this Extension 2.23 is not subject to the Insuring Clauses or Exclusion 5.13.

2.24 Employment Practices Liability

WE shall pay on behalf of the INSURED for the amount of any CLAIM including claimant's costs and expenses first made against the INSURED or any INSURED PERSONS and notified to US during the POLICY PERIOD in respect of any EMPLOYMENT PRACTICE WRONGFUL ACT by the INSURED or INSURED PERSONS.

The EPL EXCESS will apply in relation to each and every person who brings a CLAIM against the INSURED and includes DEFENCE COSTS.

OUR total aggregate liability under this extension shall be part of and not be in addition to the INDEMNITY LIMIT stated in the SCHEDULE in all for the POLICY PERIOD.

WE shall not pay any CLAIM based upon, arising out of, attributable to or in any way connected to any EMPLOYMENT PRACTICE WRONGFUL ACT committed or alleged to have been committed prior to the EPL RETROACTIVE DATE or any EMPLOYMENT PRACTICE WRONGFUL ACT occurring on or subsequent to the EPL RETRO ACTIVE DATE which is related to or a continuation of or repetition of or causally connected to an EMPLOYMENT PRACTICE WRONGFUL ACT occurring prior to the EPL RETRO ACTIVE DATE.

WE shall not indemnify the INSURED and/or INSURED PERSONS under this extension for any amounts in connection with or any part of a CLAIM for:

- 2.24.1 any obligation pursuant to any law or any regulation in any jurisdiction in respect of workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever;
- 2.24.2 bodily injury (excluding mental injury which includes but is not limited to mental stress and mental anguish), disease or death of any EMPLOYEE of the INSURED or damage to or destruction of any property of any EMPLOYEE, including loss of use.
- 2.24.3 any employment related benefits to which the claimant would have been entitled as an EMPLOYEE had the INSURED and/or the INSURED PERSONS provided the claimant with a continuance, reinstatement or commencement of employment;
- 2.24.4 industrial disputes involving a strike, picket, lockout, go slow or work to rule;
- 2.24.5 contractual damages based upon the terms of a contract of employment;
- 2.24.6 any liability or costs incurred by the INSURED and/or any INSURED PERSON to modify any building or property in order to make such a building or property more accessible or accommodating to any person.

WE shall indemnify the INSURED and/or INSURED PERSONS under this extension for any amounts in connection with or any part of a CLAIM for:

- 2.24.7 (a) any salary or wages or other financial remuneration for anyone whilst in the employment of the INSURED or would have been entitled to as an EMPLOYEE had the INSURED and/or the INSURED PERSONS provided the claimant with a continuance, reinstatement or commencement of employment;
- (b) a contract of employment alleged to be unfair.

The maximum amount payable under extension 2.24.7 is \$25,000 which is part of the total INDEMNITY LIMIT and not in addition. An excess of \$5,000 applies to each and every CLAIM under extension 2.24.7.

The cover provided by this Extension 2.24 is not subject to the Insuring Clauses or Exclusion 5.6 or 5.8.

2.25 Pollution Defence

The Pollution Exclusion shall not apply to DEFENCE COSTS which are payable for any CLAIM brought against an INSURED PERSON in connection with any actual or alleged discharge, dispersal, release or escape of POLLUTANTS.

CLAIMS CONDITIONS

The following CLAIMS conditions apply to this insurance:

3.1 Discovery of a CLAIM

If during the POLICY PERIOD the INSURED receives notice of any CLAIM that is indemnifiable under this insurance the INSURED shall give notice to US as soon as practicable.

3.2 Admission of Liability

In the event of any CLAIM, the INSURED shall not admit liability and no admission, offer, promise or payment shall be made by the INSURED without OUR prior written consent.

3.3 Conduct of CLAIMS

Following notification of any CLAIM, WE shall be entitled to take over and conduct in the name of the INSURED the investigation, defence or settlement of any such matter. The INSURED shall CO-OPERATE with and give all such assistance as WE may reasonably require.

3.4 CLAIM Settlements

WE may at any time pay (or agree to pay) to the INSURED in connection with any CLAIM or CLAIMS the INDEMNITY LIMIT (less the EXCESS, any sums already paid and unpaid DEFENCE COSTS incurred with OUR prior written consent) and upon such payment (or agreement to pay) WE shall not be under any further liability in respect of such CLAIM except for DEFENCE COSTS incurred prior to such payment (or agreement to pay) with OUR prior written consent.

Notwithstanding such payment (or agreement to pay) by US, in no circumstances will WE be liable in respect of such CLAIM or CLAIMS for an amount greater than otherwise provided for in this policy. In the event that:

- 3.4.1 WE have made a payment in excess of the amount for which WE would otherwise have been liable in accordance with the policy in respect of such CLAIM, the INSURED shall refund to US that proportion of the payment which exceeds the amount which WE would otherwise have been liable for in accordance with the POLICY.
- 3.4.2 WE have agreed to pay an amount in excess of the amount which WE would otherwise have been liable for in accordance with the policy in respect of such CLAIM, OUR liability in respect of such agreement shall be limited to the amount which WE would otherwise have been liable for in accordance with the policy.

3.5 OUR and the INSURED's right to defend

The INSURED shall be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the INSURED and US or failing agreement to be appointed by the President of the NSW Bar Association) shall advise that, taking due account of the interests of both US and the INSURED, such proceedings should not be contested.

If the INSURED wishes to continue to contest any CLAIM which WE wish to settle, the INSURED may do so. However, OUR liability in respect of that CLAIM shall thereafter be limited to the amount for which the CLAIM could have been settled plus DEFENCE COSTS incurred with OUR prior written consent up to the date upon which it would have reasonably settled the CLAIM, less any unpaid EXCESS.

3.6 EXCESS

The INSURED is liable for the amount of any EXCESS stated in the SCHEDULE and WE shall have no liability for the amount of any EXCESS.

GENERAL CONDITIONS

The following general conditions apply to this insurance:

4.1 Certification

This is to certify that in accordance with the authorisation granted under the contract (the number of which is specified in the SCHEDULE) to the undersigned by certain Underwriters at Lloyd's, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said contract, and in consideration of the payment of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

4.2 Several Liability Notice

The subscribing INSURERS' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing INSURERS are not responsible for the subscription of any co-subscribing INSURER who for any reason does not satisfy all or part of its obligations.

4.3 Service of Suit

The Underwriters accepting this insurance agree that:

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

Address: Lloyd's Underwriters' General Representative in Australia,
Level 9, 1 O'Connell St, Sydney NSW 2000

who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the INSURED'S request to give a written undertaking to the INSURED that it will enter an appearance on the Underwriters' behalf;

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

In the event of a CLAIM arising under this insurance IMMEDIATE NOTICE should be given to Hostsure.

4.4 Terms of Payment

All premiums due to US under this policy will be paid within 30 days from the policy's inception.

4.5 Cancellation

The circumstances and manner in which WE may cancel this insurance is governed by the *Insurance Contracts Act 1984* (Cth).

The INSURED may cancel this insurance at any time by giving 14 days notice and provided there have been no notifications made by the INSURED under this policy the INSURED shall be entitled to a pro rata refund. If the INSURED has made a notification under the policy then the INSURED is not entitled to any refund.

In any event WE are entitled to retain a minimum premium of \$750 in the event of cancellation by the INSURED.

4.6 Subrogation

If any payment is made by US, the INSURED grants to US all rights of recovery against any parties from whom a recovery may be made and the INSURED shall take all reasonable steps to preserve such rights.

4.7 Retroactive Date

Where a retroactive date is specified in the SCHEDULE, this insurance shall not indemnify the INSURED for any CLAIM in connection with the exercise and conduct of the BUSINESS prior to the said retroactive date.

The cover provided by Extension 2.11 this insurance shall not extend to any CLAIM in connection with the exercise and conduct of the business of such entity of subsidiary prior to the retroactive date specified in that Extension.

4.8 Claims Aggregation

Where two or more CLAIMS arise from the same original cause then all such CLAIMS shall constitute one CLAIM under the policy and

4.8.1 only one EXCESS shall be payable by the INSURED; and

4.8.2 the maximum amount payable by US in respect thereof shall not exceed the INDEMNITY LIMIT.

4.9 Alteration to risk

The INSURED shall give US written notice as soon as practicable of any material alteration to the risk during the POLICY PERIOD including but not limited to:

- (a) an INSURED going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an INSURED failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the PROFESSIONAL SERVICES offered by an INSURED.

Where such notice is given and/or where there is any material alteration to the risk WE shall be entitled to cancel this policy in accordance with the *Insurance Contracts Act 1984* (Cth).

4.10 Currency

All monetary amounts referred to in this policy are expressed and payable in Australian dollars.

4.11 Jurisdiction

WE and the INSURED agree that all disputes arising out of or under this policy will be subject to determination by any Court of competent jurisdiction within Australia.

EXCLUSIONS

This insurance shall not indemnify the INSURED against any CLAIM or for any loss directly or indirectly arising out of, related to, or in connection with:

5.1 Previously Known CLAIM or Circumstance

any:

- 5.1.1 CLAIM made upon the INSURED prior to the inception of this policy; or
- 5.1.2 fact, matter or circumstance known to the INSURED, at any time prior to the inception of this policy, and which the INSURED knew or a reasonable person in the INSURED's profession could, in the circumstances, be expected to know or have known might give rise to a CLAIM against the INSURED; or
- 5.1.3 fact, matter or circumstances which were disclosed by the INSURED to US prior to the inception of this policy, whether in the proposal or otherwise; or
- 5.1.4 fact, matter or circumstance which was notified by the INSURED to any prior insurer.

5.2 Pollution

any:

- 5.2.1 actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of POLLUTANTS, or
- 5.2.2 direction or request to, or effort by the INSURED or any other person or organization to:
 - (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralize POLLUTANTS, or
 - (b) respond to or assess the effects of POLLUTANTS.

5.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fine or penalty or any multiple, exemplary, punitive or aggravated damages except as provided for under Automatic Extension 2.16

5.4 USA/Canada

- 5.4.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates or judgement registered or lodged in connection with such an action; or
- 5.4.2 any work or activities undertaken by the INSURED in the United States of America, Canada or their dominions or protectorates.

5.5 Loss of DOCUMENTS - Magnetic or Electrical Media

the physical loss of or damage to DOCUMENTS which are stored on magnetic or electrical media unless such DOCUMENTS are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the DOCUMENTS to their original status.

5.6 Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any EMPLOYEE of the INSURED or damage to or destruction of any property of any EMPLOYEE, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment.

5.7 Liability involving Transport or Property owned by the INSURED

the ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the INSURED or any property of the INSURED.

5.8 Bodily Injury and/or Property Damage

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any person(s) or loss of or damage to property, including loss of use of any property.

5.9 Contractual Liability

any liability assumed by the INSURED under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement:

5.9.1 to pay liquidated damages or any penalty; or

5.9.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

5.10 Supply of Goods

5.10.1 the sale, endorsement, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the INSURED; or

5.10.2 any defective workmanship or defective materials relating to physical works of construction.

5.11 Fraud, Dishonesty or Criminal Act

5.11.1 in the case of OFFICE BEARERS and Associations Liability;

(a) improper use of position or information to gain any profit or advantage or cause any detriment to the INSURED;

(b) remuneration illegally paid to or received by an INSURED; or

(c) criminal, dishonest, fraudulent, wilful or malicious act, error or omission, or any intentional or knowing violation of law;

but only if the foregoing have been established by any judgment, award or other finding by a court, tribunal or arbitrator or such INSURED admits in writing to (a), (b) or (c) above; or

5.11.2 in the case of Professional Indemnity;

(a) deliberate or reckless WRONGFUL ACT, defamation or infringement; or

(b) act which a court, tribunal or arbitrator finds, or which an INSURED admits, to be a criminal, dishonest or fraudulent act; provided, however, that this exclusion shall not apply to liability for fraudulent or dishonest conduct of any EMPLOYEE or INSURED PERSON within the meaning of Professional Liability.

5.12 Refund of Fees or Charges

any CLAIM for return, refund or disgorgement of any professional fees, charges, commissions or other remuneration of whatsoever kind received by, paid or payable to the INSURED in connection with the BUSINESS.

5.13 Associated Companies

5.13.1 in the case of OFFICE BEARERS and Associations Liability, brought by or on behalf of any INSURED; provided, however, that this exclusion shall not apply to:

(a) DEFENCE COSTS;

(b) any shareholder derivative action brought or maintained on behalf of any INSURED without the solicitation or participation of any INSURED; or

(c) any CLAIM brought or maintained by a liquidator, receiver or administrative receiver derivatively on behalf of any INSURED without the solicitation or participation of any INSURED.

5.13.2 Major Shareholders

brought against any INSURED by, at the instigation of, or on behalf of, any past or present shareholder who had or has direct or indirect ownership of, or control over, 15% or more of the voting share capital of:

(a) any INSURED; or

(b) in the case of an Outside Director, any OUTSIDE ENTITY.

5.14 Extensions

- 5.14.1 the *Competition and Consumer Act 2010 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)* or any State or Territory Fair Trading legislation; or
- 5.14.2 any actual infringement or alleged infringement of any copyright or patents or other intellectual property rights; or.
- 5.14.3 any WRONGFUL ACT committed in the course of providing the PROFESSIONAL SERVICES on behalf of the INSURED. However this exclusion 5.14.3 does not apply to Insuring Clause 1.1.3.

5.15 Investment Advice

the giving of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial return (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any investment or portfolio of investments.

5.16 Medical Treatment or Research

medical treatment, advice, service or research and development.

5.17 Failure to maintain Insurance

from the failure of the INSURED and/or INSURED PERSONS to arrange and/or maintain insurance.

5.18 Sanction Limitation and Exclusion Clause

No (re)INSURER shall be deemed to provide cover and no (re)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 (re)INSURER to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect.

DEFINITIONS AND INTERPRETATIONS

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear, whether they are used in the plural or singular form, they are deemed to have the meaning set out below:

6.1 CLAIM

Shall mean:

- 6.2.1 any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the INSURED claiming damages or other compensatory remedy; and
- 6.2.2 the positive assertion in writing of a legal entitlement to damages or other compensatory remedy in connection with an alleged civil liability on the part of the INSURED, in terms evincing an intention to pursue such legal entitlement.

6.2 CO-OPERATE

Shall mean that the INSURED:

- 6.2.1 assists US and OUR duly appointed representatives to put forward the best possible defence of a CLAIM within the time constraints available;
- 6.2.2 shall have adequate internal systems in place, which will allow ready access to material information; and
- 6.2.3 shall at all times and at its own cost give to US or OUR duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

6.3 CRISIS

Shall mean any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the INSURED, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the INSURED if left unmanaged:

- (a) the sudden, unexpected death or disability of any OFFICE BEARER;
- (b) loss of a major customer, contract or credit facility;
- (c) Employee workplace violence;
- (d) the first apparent unauthorized intrusion into any INSURED's computer facilities;
- (e) a recall or boycott of any product;
- (f) a man-made disaster;
- (g) any criminal or fraud Investigation;

CRISIS event does not include an event that affects an INSURED's industry in general; rather than an INSURED specifically.

6.4 CRISIS LOSS

Shall mean the reasonable and necessary fees, costs and expenses paid by an INSURED for external crisis management services provided in response to a CRISIS event within the first 30 days after the event.

6.5 DEFENCE COSTS

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any CLAIM in respect of which WE are liable to indemnify the INSURED under the terms of this insurance.

6.6 DOCUMENTS

Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and shall include computer software and systems records (electronic data shall be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, bank or currency notes and other negotiable paper.

6.7 EMPLOYEE

Shall mean either:

- 6.7.1 any natural person who is a past, present or future full-time, part-time, seasonal or temporary employee; and
- 6.7.2 any volunteer under the direction and control of the INSURED; or
- 6.7.3 in the case of Fidelity Cover only, 6.7.1 and 6.7.2 above at the time of Discovery; who are not OFFICE BEARERS, auditors, consultants, independent contractors, secondees or agents.

6.8 EMPLOYMENT PRACTICE WRONGFUL ACT

Shall mean:

- 6.8.1 discrimination with respect to the terms or conditions of employment on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
- 6.8.2 sexual harassment, including unwelcome sexual advances, requests for sexual favours, and any unwelcome verbal, visual or physical contact of a sexual nature which:
 - (a) is explicitly or implicitly made a term or condition of employment;
 - (b) creates a hostile or offensive working environment;
 - (c) when rejected or opposed by a person becomes a basis for decisions regarding that person's employment;
- 6.8.3 defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for employment, professional reputation, disciplinary history, or termination of employment;
- 6.8.4 wrongful termination of employment or refusal to hire;
- 6.8.5 an adverse change in the terms and conditions of a person's employment in retaliation for that person's exercise of his or her rights under law, or support of the rights of another.

6.9 EPL EXCESS

Shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and shall be the first amount of each CLAIM made by the INSURED and is payable by the INSURED.

6.10 EPL RETRO ACTIVE DATE

Shall mean the date shown in the SCHEDULE.

6.11 EXCESS

EXCESS shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and shall be the first amount payable of each CLAIM made against the INSURED.

6.12 INDEMNITY LIMIT

Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of any one CLAIM and in the aggregate during the POLICY PERIOD.

6.13 INSURED

Shall mean the person(s), partnership, company, corporation or other entity named as the INSURED in the SCHEDULE.

6.14 INSURED PERSONS

Shall mean an OFFICE BEARER of the INSURED.

In respect of insuring clause 1.1.3, 1.1.4 and 1.1.5 this definition extends to include EMPLOYEE(S) subject to all the terms, conditions and exclusions of this insurance.

The term trustee is expressly extended to include any fiduciary capacity of such trustee owed to any employee benefits plan, pension plan or superannuation fund of any partnership, company, corporation or other entity named as the INSURED in the SCHEDULE.

6.15 LEGISLATION

Shall mean the *Privacy Act 1988* (Cth), *Corporations Act 2001* (Cth), Associations Incorporations Act of each state or territory, *Competition and Consumer Act 2010* (Cth) and Occupational Health & Safety legislation of any Australian State or Territory.

6.16 MEMBER

Shall mean a member as defined in the INSURED's governing articles or rules and includes any past, present or prospective members of the INSURED.

6.17 OFFICE BEARER

Shall mean any natural person who is a past, present or future:

6.17.1 duly elected or appointed director or trustee (other than a trustee of an insolvent entity);

6.17.2 executive officer, senior manager or committee member; or

6.17.3 any other person with duties equivalent to those of the positions listed in 6.17.1 and 6.17.2 above.

6.18 OUTSIDE ENTITY

Shall mean any not for profit organisation.

6.19 POLICY PERIOD

Shall mean the period shown in the SCHEDULE plus any extensions to the period which may be granted by US.

6.20 POLLUTANT

means any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including, but not limited to, asbestos, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

6.21 PROFESSIONAL SERVICES

Shall mean advice given and service(s) performed by or on behalf of the INSURED and/or INSURED PERSONS as detailed in the SCHEDULE. This definition does not include work undertaken by the INSURED PERSONS in the capacity of trustee, director or officer of the INSURED.

6.22 SCHEDULE

Shall mean the document entitled 'Schedule' that relates to this insurance.

6.23 SPOUSE

Shall mean the legally recognised spouse of the INSURED PERSON.

6.24 TAX AUDIT COSTS

Shall mean reasonable and necessary fees, costs and expenses of a qualified accountant or registered tax agent incurred by or with the prior written consent of US arising from an Australian Tax Office audit of the INSURED.

6.25 TAX STATUS COSTS

Shall mean reasonable and necessary fees, costs and expenses incurred by or with the prior written consent of US to exercise any right of review or available remedy in connection with an Australian Tax Office audit concerning the INSURED's concessional tax status.

6.26 WE/OUR/US/INSURER

Means certain Underwriters at Lloyd's, the INSURER /issuer of this policy.

Note: You can obtain further details of the INSURER from Hostsure upon request.

6.27 WRONGFUL ACT

Shall mean any libel, slander or defamation of character, any error, mis-statement, omission, neglect, negligence, breach of duty, breach of statutory duty, breach of trust (including breach of constructive trust), breach of confidentiality resulting in a civil liability incurred by the INSURED and/or INSURED PERSONS.

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