



Directors' and Officers' Liability Coverage Section

In consideration of payment of the premium and subject to the terms and conditions of this Coverage Section, the Company and the **Insured** agree as follows:

1. INSURING CLAUSES

- Executive Liability Coverage** A. The Company shall pay, on behalf of each **Insured Person**, **Loss** for which the **Insured Person** is not indemnified by an **Organisation** on account of any **Claim** first made during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** occurring before or during the **Policy Period**.
- Company Reimbursement Coverage** B. The Company shall pay, on behalf of an **Organisation**, **Loss** for which an **Organisation** grants indemnification to each **Insured Person**, as permitted or required by law, on account of any **Claim** first made during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** occurring before or during the **Policy Period**.
- Legal Representation Expenses** C. The Company shall pay, on behalf of each **Insured Person**, **Legal Representation Expenses** on account of any **Formal Investigation** commenced during the **Policy Period**.
- Entity Securities Coverage - Optional** D. The Company shall pay, on behalf of an **Organisation**, **Loss** on account of any **Claim** first made during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** occurring before or during the **Policy Period**.

2. EXTENSIONS

- Advancement of Defence Costs & Legal Representation Expenses** A. The Company shall, prior to the final disposition of any **Claim**, advance **Defence Costs** or **Legal Representation Expenses** as provided under this Coverage Section, within thirty (30) days of receipt of an invoice for same from defence counsel.
- Any advancement of **Defence Costs** or **Legal Representation Expenses** shall be repaid to the Company by the **Insureds**, severally according to their respective interests, if and to the extent it is determined that such **Defence Costs** or **Legal Representation Expenses** are not insured under this Coverage Section.
- Pecuniary Penalties** B. Coverage shall extend to **Pecuniary Penalties** on account of any **Claim** made against an **Insured Person** up to the amount of the sub-limit in Item 2 of the Schedule.
- Occupational Health & Safety Defence Costs** C. Notwithstanding exclusion 4.A.(v), coverage shall extend to **Defence Costs** on account of any **Claim** made against an **Insured Person** or **Legal Representation Expenses** in connection with a violation or breach of an occupational health and safety, including but not limited to any workplace death or industrial manslaughter law anywhere in the world.



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Pollution Defence Costs

- D. Notwithstanding exclusion 4.A.(vi), coverage shall extend to **Defence Costs** on account of any **Claim** made against an **Insured Person** in respect of **Pollution** up to the amount of the sub-limit in Item 2 of the Schedule provided such **Claim** is brought and maintained entirely outside the **U.S.A.**

Shareholder Pollution Actions

- E. Notwithstanding exclusion 4.A.(vi), coverage shall extend to **Loss** on account of any **Claim** made against an **Insured Person** in respect of **Pollution** brought by any shareholder of an **Organisation** in his capacity as such, whether in his own right or on behalf of an **Organisation**, provided that such **Claim** is brought and maintained without the assistance, participation or solicitation by any **Insured**.

Dedicated Additional Limit of Liability for Directors and Officers

- F. The Company shall pay, under this Extension only, on behalf of any **Director** or **Officer**, **Loss** on account of any **Claim** first made during the **Policy Period**, or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** occurring and **Formal Investigation** into conduct occurring before or during the **Policy Period**.

The Company's maximum liability under this Extension shall not exceed the limit of liability as set forth in Item 2 of the Schedule inclusive of all **Loss** in respect of all **Claims** against all **Directors** or **Officers**.

The Company shall pay the Dedicated Additional Limit of Liability for Directors and Officers in addition to the Limit of Liability only after the Company has paid the full amount of such Limit of Liability. The Dedicated Additional Limit of Liability for Directors and Officers is not eroded by payments within the Limit of Liability.

The Dedicated Additional Limit of Liability for Directors and Officers shall be excess of any insurance available that is specifically excess of this Coverage Section. Such excess insurance must be completely exhausted by payment of loss, damages or defence costs thereunder before the Company shall have any obligation to make payment on account of the Dedicated Additional Limit of Liability for Directors and Officers. The **Insured** agrees to provide the Company all details of any excess policies effected once they become known to them and the Company will endorse the policy accordingly.

Outside Directorship Liability

- G. Coverage shall extend to any **Outside Directorship**.

Coverage for any **Outside Directorship** shall:

- (i) not be available to the **Outside Entity** in which such **Outside Directorship** is held or to any of the other directors, officers or employees of such **Outside Entity**;
- (ii) be specifically excess of:
 - (a) any policies listed in the **Proposal** for the **Outside Entity**;
 - (b) any other policy; and
 - (c) any indemnity available from the **Outside Entity** to such **Insured Person** by reason of serving in such **Outside Directorship**.



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If during the **Policy Period** coverage is sought for any additional **Schedule Outside Entity** such coverage shall apply to such **Scheduled Outside Entity** for a period of ninety (90) days from the date of commencement of such **Scheduled Outside Entity**. Coverage for such **Scheduled Outside Entity** shall terminate ninety (90) days after the date of commencement of such **Scheduled Outside Entity** unless the Company accepts in writing such **Scheduled Outside Entity**. Coverage for any additional **Scheduled Outside Entity** is subject to all limitations, conditions, provisions and other terms of this Coverage Section.

If any **Claim** made against an **Insured Person** due to an **Outside Directorship** is insured under any other policy issued by the Company, its parent, a subsidiary or affiliate, then payment under such policy on account of a **Claim** also covered under this Coverage Section shall reduce, by the amount of the payment, the Company's Limit of Liability under this policy with respect to such **Claim**.

Retired Directors and Officers

H. If this Coverage Section is terminated or not renewed by either the Company or the **Principal Organisation** for any reason, other than non-payment of premium, and provided that no **Event** has occurred, **Retired Directors or Officers** shall have the right to an Extended Reporting Period of eighty-four (84) months within which to report any **Claims** that are first made during such eighty-four (84) month period but only to the extent such **Claims** are for **Wrongful Acts** occurring prior to and **Formal Investigations** into conduct occurring prior to the effective date of termination or non-renewal. There is no additional premium payable for such Extended Reporting Period in respect of any **Retired Directors or Officers**.

Emergency Defence Costs

I. If, because of an emergency, the Company's prior written consent to any **Defence Costs** or **Legal Representation Expenses** cannot be requested, **Defence Costs** or **Legal Representation Costs** can be incurred without that consent for a period of thirty (30) days immediately following the date on which the **Claim** was first made.

Continuity of Cover

J. Notwithstanding exclusion 4. (ii), **Pending or Prior**, coverage is provided for **Claims** or circumstances which could or should have been notified under any policy or coverage section of which this **Coverage Section** is a renewal or replacement or which it may succeed in time provided always that:

- (i) the **Claim** or circumstance could and should have been notified after the Pending or Prior Date set forth in the Schedule;
- (ii) the Company has continued to be the insurer under such previous policy or coverage section without interruption; and
- (iii) the cover provided by this Extension shall be in accordance with all the terms and conditions of the policy or coverage section under which the **Claim** or circumstance could and should have been notified.

Cover as set forth in the above extensions is subject to all the provisions of this Coverage Section unless stated otherwise.



3. DEFINITIONS

When used in bold type in this Coverage Section:

Claim means:

- (a) With respect to Insuring Clauses 1.A and 1.B only:
 - (i) a written demand for monetary damages or non-pecuniary relief;
 - (ii) a civil proceeding;
 - (iii) an arbitration, mediation, conciliation or alternative dispute resolution proceeding;
 - (iv) a criminal proceeding;
 - (v) an **Extradition** proceeding; or
 - (vi) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, against any **Insured Person**, individually or otherwise, for a **Wrongful Act**, including any appeal therefrom.
- (b) With respect to Insuring Clause 1. C only, a **Formal Investigation**.
- (c) With respect to Insuring Clause 1.D only (where granted):
 - (i) any written demand for monetary damages or non-pecuniary relief;
 - (ii) a civil proceeding;
 - (iii) an arbitration, mediation, conciliation or alternative dispute resolution proceeding;
 - (iv) a criminal proceeding; or
 - (v) a formal administrative or formal regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

against an **Organisation** for a **Wrongful Act**, including any appeal therefrom.

Consensual Claim means any **Claim** which is brought with the solicitation, intervention, participation or assistance (other than where an **Insured** is compelled by law to assist or participate in such **Claim**) of an **Insured** against whom it is brought.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of an **Organisation** or office overheads, travel costs unrelated to a **Claim** or other administration costs) incurred in defending, investigating, settling or appealing any **Claim** and the premium paid for appeal, attachment, bail or similar bonds. For the avoidance of doubt, **Defence Costs** shall include reasonable costs, charges or fees resulting from an **Insured Person** lawfully opposing, challenging, resisting or defending against any request for or any effort to obtain the **Extradition** of such **Insured Person**; or appealing any order or other grant of **Extradition** of such **Insured Person**.

Director means any person who:

- (a) is appointed to the position of a director; or is appointed to the position of an alternate director and is acting in that capacity; regardless of the name that is given to their position; and
- (b) is not validly appointed as a director if they act in the position of a director; or the directors of the company are accustomed to act in accordance with such person's instructions or wishes (excluding advice given by the person in the performance of functions attaching to his professional capacity or his business relationship with the directors of the **Organisation**).

Director shall include any equivalent position in any jurisdiction.



Employment Claim means a **Claim** for any actual or alleged wrongful or unfair, employment-related: discipline, dismissal, discharge or termination of employment; denial of natural justice; breach of any oral, written or implied employment contract; misrepresentation; discrimination; harassment; sexual harassment; failure to employ or promote; deprivation of a career opportunity; failure to grant tenure; demotion; evaluation; invasion of privacy; defamation; or infliction of emotional distress.

Event means (a) an **Organisation** merging into or consolidating with another organisation such that the **Organisation** becomes a subsidiary of the other organisation; (b) another organisation acquiring the business or assets of an **Organisation**; or (c) another organisation or person or group of organisations or persons acting in concert acquiring control of the composition of an **Organisation's** board, being in a position to cast, or control the casting of more than fifty percent (50%) of the maximum number of votes that might be cast at a general meeting of the **Organisation** or holding more than fifty percent (50%) of the issued share capital of the **Organisation** (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

External Administrator means any liquidator, receiver, receiver and manager, administrator, controller or holder of similar office or position in any jurisdiction whether appointed under the provisions of Part 5 of the Corporations Act 2001 (Cth) or any other law anywhere in the world or pursuant to the provisions of any contract or other instrument.

Extradition means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

Financial Impairment means (i) the appointment by any tribunal, agency or court, anywhere in the world, or by a creditor of any **External Administrator** to take control of, supervise, administer, manage or liquidate an **Organisation** or its assets, business or affairs; or (ii) an **Organisation** becoming a debtor in possession or taking any corporate action or commencing legal proceedings for its winding-up, dissolution, administration or receivership or an event occurring which has an analogous effect under the laws of any jurisdiction.

Formal Investigation means a formal administrative or formal regulatory inquiry by a governmental, regulatory, self-regulatory, professional, statutory or official body or institution that is empowered by law to investigate the affairs of an **Insured Person** or an **Organisation**, including, for the avoidance of doubt, a royal commission. **Formal Investigation** does not include: (1) any inquiry that is empowered by law to investigate the performance of or failure to perform professional services by an **Organisation** or any possible misconduct on the part of an **Insured Person** in performing or failing to perform professional services; or (2) any routine supervision, inspection, compliance or similar reviews conducted by any regulatory, self-regulatory, professional, statutory or official body or institution.

Insured means an **Organisation** and/or **Insured Persons**.

Insured Capacity means the position or capacity designated in the definition of **Insured Person** held by any **Insured Person** but shall not include any position or capacity in any organisation other than an **Organisation**, even if such **Organisation** directed or requested the **Insured Person** to serve in such other position or capacity, other than an **Outside Directorship**.

Insured Person means any natural person who was, now is or shall be:

- (a) a **Director** or **Officer** of an **Organisation**;
- (b) a member of any compliance committee established pursuant to the Corporations Act 2001 (Cth);
- (c) a member of any board committee or advisory board, or the holder or any equivalent position in any jurisdiction, provided such member is indemnified by an **Organisation**;
- (d) a responsible officer of an **Organisation**;



- (e) an employee of an **Organisation** but only:
 - (i) with respect to an **Employment Claim**;
 - (ii) to the extent that such employee is acting in any managerial or supervisory capacity;
 - (iii) where such employee holds an **Outside Directorship**; or
 - (iv) for as long as such employee is the subject of a **Claim** along with any **Director** or **Officer**;
or
- (f) a **Director** or **Officer** of an **Organisation** who is a director of a corporate trustee or policy committee member of any superannuation fund established for the benefit of employees of an **Organisation**.

Insured Person shall not include an **External Administrator**.

Legal Representation Expenses means reasonable **Defence Costs** which an **Insured Person** incurs on account of the attendance and/or the provision of documents or information by such **Insured Person** in an **Insured Capacity** at or to any **Formal Investigation**.

Loss means the amount which an **Insured** becomes legally obligated to pay on account of any covered **Claim** including, but not limited to:

- (a) **Defence Costs**;
- (b) **Legal Representation Expenses**;
- (c) awards of damages or orders made by any court or tribunal to pay compensation;
- (d) judgments;
- (e) sums payable due to any settlements to which the Company has consented ;
- (f) awards of claimant's costs;
- (g) pre-judgment and post-judgment interest;
- (h) punitive, exemplary or aggravated damages unless the Company is legally prohibited from paying in the jurisdiction in which the **Claim** is determined;
- (i) the multiple portion of any multiplied damages award unless the Company is legally prohibited from paying such damages in the jurisdiction in which the **Claim** is determined; and
- (j) **Pecuniary Penalties**.

Loss does not include:

- (i) any amount for which the **Insured Person** is absolved from payment by reason of any covenant or agreement, other than indemnification of an **Insured Person** by an **Organisation**, or order or determination of a tribunal or court;
- (ii) fines or penalties other than to the extent covered pursuant to paragraph (j) above;
- (iii) any amount not covered by this Coverage Section because of section 11. Allocation;
- (iv) matters for which the Company is legally prohibited from paying the **Insured** under Australian law other than to the extent covered pursuant to paragraphs (h) and (i) above; or
- (v) costs and expenses of any kind, including **Defence Costs** and **Legal Representation Expenses**, in connection with the matters in (i) – (iv) above.

Officer means any:

- (a) company secretary; or
- (b) person:
 - (i) who makes, or participates in making decisions that affect the whole, or a substantial part of the business of an **Organisation**;
 - (ii) who has the capacity to affect significantly an **Organisation's** financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of an **Organisation** are accustomed to act (excluding advice given by the person in the performance of functions attaching to his professional capacity or his business relationship with the directors of an **Organisation**).



Officer shall include any equivalent position in any jurisdiction.

Organisation means, collectively, the **Principal Organisation** and any **Subsidiary**.

Outside Directorship means the position of company director (including, for the avoidance of doubt, a de facto director, alternate director or shadow director), officer, trustee, governor, councillor, company secretary, or the holder of an equivalent position in any jurisdiction, held by an **Insured Person** in an **Outside Entity** provided that such position is assumed and maintained with the knowledge and consent or at the request of an **Organisation**.

Outside Entity means any organisation that is not an **Organisation** and:

- (a) whose governing documents prevent it from distributing profits or assets for the benefit of members, whether or not it is exempt from the payment of income tax under any law, regulation or by-law anywhere in the world;
- (b) which is not registered or approved for direct or indirect trading on a national securities exchange or over the counter trading system anywhere in the world;
- (c) which is not located, incorporated or domiciled or does not operate in the United States of America or any territory under its jurisdiction;
- (d) which is not an authorised deposit taking institution, finance company, leasing company, friendly society, life insurance company, general insurance company, reinsurance company, investment company, mutual fund, collective investment scheme, fund manager, investment adviser, responsible entity of a managed investment scheme, trustee company, money market corporation, investment bank or any broker or dealer in securities or commodities, mortgage broker, real estate agent, stock exchange, commodities exchange, futures exchange, custodian, clearing house, registrar, medical benefits association or hospital benefits association or organisations of a similar nature; or
- (e) which is a **Scheduled Outside Entity** where the **Outside Directorship** is specified in a Scheduled Outside Entity Endorsement to this policy at the inception of the **Policy Period**.

Pecuniary Penalties means pecuniary or administrative fines or penalties which an **Insured Person** is ordered to pay in and under the laws of the Commonwealth of Australia and/or New Zealand, including, for the avoidance of doubt, fines or penalties which an **Insured Person** is ordered to pay pursuant to the Trade Practices Act 1974 (Cth).

Pollutants means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, an environmental protection agency (including but not limited to the United States Environmental Protection Agency) or any counterpart thereof anywhere in the world. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any air emission, odour, waste water, oil, oil products, infectious or medical waste, asbestos or asbestos products or any noise.

Pollution means:

- (a) the actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, escape, seepage, migration, dispersal, treatment, removal or disposal of any **Pollutants**; or
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or
 - (i) any action taken in response to or contemplation or anticipation of any such regulation, order, direction or request; or
 - (ii) any action taken voluntarily to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, whether or not in relation to any such regulation, order, direction or request;



including but not limited to any claim for loss to an **Organisation** or an **Outside Entity**, the holders of its securities or its creditors based upon, arising from, or in consequence of the matters described in (a). or (b). of this definition other than to the extent covered pursuant to Extension 2.F.

Principal Organisation means the organisation designated in Item 1 of the Schedule.

Proposal means all proposals, including attachments and materials incorporated therein, submitted by, or information disclosed by, the **Insureds** to the Company for this Coverage Section or any policy issued by the Company of which this Coverage Section is a direct or indirect renewal or replacement. All such proposals, attachments and materials are deemed attached to, incorporated into and made a part of this Coverage Section.

Retired Directors or Officers means a **Director** or **Officer** who has ceased to act in their **Insured Capacity** prior to the expiry of the **Policy Period** for reasons other than disqualification from holding the office of director or from managing a company and other than due to an **Event**.

Scheduled Outside Entity means any organisation listed in a Scheduled Outside Entity Endorsement to this Coverage Section.

Subsidiary means, at the time of the occurrence of a **Wrongful Act**, any organisation in which one or more **Organisations**:

- (a) controls the composition of the organisation's board;
- (b) is in a position to cast, or control the casting of, more than fifty percent (50%) of the maximum number of votes that might be cast at a general meeting of the organisation; or
- (c) holds more than fifty percent (50%) of the issued share capital of the organisation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

U.S.A means the United States of America and any territory under its jurisdiction.

U.S.A Claim means a **Claim** brought or maintained, in whole or in part, in the **U.S.A** or based, in whole or in part, on any law of the **U.S.A**.

Wrongful Act means any act or omission, including but not limited to any error, misstatement, misleading statement, neglect, breach of trust or breach of duty committed, attempted, or allegedly committed or attempted, by:

- (a) with respect to Insuring Clauses 1.A and 1.B only: an **Insured Person**, individually or otherwise, in his **Insured Capacity**, or any matter claimed against such **Insured Person** solely by reason of his serving in such **Insured Capacity**; or
- (b) with respect to Insuring Clause 1.D only (where granted): any **Insured** with respect to the purchase or sale of, or offer to purchase or sell, any securities issued by an **Organisation**; or the ownership of securities of an **Organisation** by a holder of its securities.

4. EXCLUSIONS

A. Exclusions Applicable to All Insuring Clauses

The Company shall not be liable for **Loss** in respect of any **Claim**:

- Prior Notice**
- (i) based upon, arising from, or in consequence of any fact or circumstance if notice of such fact or circumstance has been given under any policy or coverage section of which this Coverage Section is a renewal or replacement or which it may succeed in time;



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- Pending or Prior** (ii) based upon, arising from, or in consequence of any demand, suit or proceeding pending against, or order, decree or judgment entered for or against any **Insured** or **Outside Entity** on or prior to the Pending or Prior Date set forth in:
- (a) Item 4 of the Schedule; or
 - (b) a Scheduled Outside Entity Endorsement;
- or the same or substantially the same facts or circumstances underlying or alleged therein, provided however, that (b) shall apply only to any **Claim** based upon, arising from or in consequence of any **Outside Directorship** in an **Outside Entity**;
- Consensual Claim** (iii) based upon, arising from, or in consequence of any **Consensual Claim**;
- U.S.A. I.v.I** (iv) which is a **U.S.A. Claim** brought or maintained by or on behalf of:
- (a) any **Insured**; or
 - (b) any **Outside Entity** or any **Director** or **Officer** of such **Outside Entity** if such **Claim** arises out of such **Outside Directorship**, except:
 - (1) a **Claim** brought or maintained on behalf of:
 - (A) an **Organisation** by one or more persons who are not **Insured Persons**, and who bring and maintain the **Claim** without the solicitation by, or the active participation, intervention or assistance of, any **Organisation** or any **Insured Person** named as a defendant in such **Claim** (other than the solicitation by, or assistance, participation or intervention of any **Insured Person** for which Section 806 of the Sarbanes-Oxley Act 2002, or any similar 'whistleblower' protection provision of an applicable securities law, affords protection to such **Insured Person**);
 - (B) an **Outside Entity** by one or more persons who are neither **Insureds** nor **Directors** or **Officers** of such **Outside Entity** and who bring and maintain the **Claim** without the solicitation by, or the active participation, intervention or assistance of any such **Director** or **Officer** (other than the solicitation by, or assistance, participation or intervention of any **Director** or **Officer** of an **Outside Entity** for which Section 806 of the Sarbanes-Oxley Act 2002, or any similar 'whistleblower' protection provision of an applicable securities law, affords protection to such **Director** or **Officer**);
 - (2) an **Employment Claim**;
 - (3) a **Claim** for contribution or indemnification brought or maintained by an **Insured Person**, or by one or more of an **Outside Entity's Directors** or **Officers** if such **Claim** directly results from another **Claim** covered under this Coverage Section;
 - (4) a **Claim** that is brought or maintained by an **External Administrator** on behalf of an **Organisation**, or an **Outside Entity**, and who brings and maintains such **Claim** without the active assistance, intervention or participation of, or solicitation by, an **Insured Person**, or one or more of an **Outside Entity's Directors** or **Officers**;



- (5) a **Claim** that is brought or maintained by or on behalf of any **Insured Person** who no longer serves in an **Insured Capacity**, and who brings and maintains such **Claim** without the active assistance, intervention or participation of, or solicitation by, the **Organisation** or any **Insured Person** serving as such at the time such **Claim** is brought or maintained; or
- (6) **Defence Costs**;

Bodily Injury and Property Damage

- (v) for bodily injury, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, whether or not it is damaged or destroyed. For clarity, this exclusion shall not apply to mental anguish, humiliation or emotional distress asserted in an **Employment Claim**;

Pollution

- (vi) based upon, arising from, or in consequence of **Pollution**;

Professional Services

- (vii) for any actual or alleged act or omission, including but not limited to, any error, misstatement, misleading statement, neglect, breach of duty or breach of trust committed, attempted or allegedly committed or attempted in the rendering of, or actual or alleged failure to render, any professional services to a third party;

Dishonesty of Insured Persons

- (viii) based upon, arising from, or in consequence of:
 - (a) any deliberately fraudulent act or omission or any wilful violation or breach of any law, regulation or by-law anywhere in the world or duty imposed by any such law, regulation or by-law by such **Insured Person**; or
 - (b) any conduct or contravention in respect of which a liability is the subject of a prohibition in section 199B(1) of the Corporations Act 2001 (Cth),

provided that this exclusion shall not apply including, for the avoidance of doubt, to the Company's obligation to advance **Defence Costs** until a final adjudication in any proceeding establishes such a deliberately fraudulent act, omission, willful violation or breach. The term 'proceeding' shall not include any declaratory proceeding brought by or against the Company; or

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- (ix) for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act, 1974 (USA) and amendments thereto.

B. Exclusions Applicable to Insuring Clause 1.D Only (where granted)

The Company shall not be liable for **Loss** in respect of any **Claim** under Insuring Clause 1.D only:

- (i) for any actual or alleged liability of an **Organisation** under any contract that relates to the purchase, sale or offer to purchase or sell any securities; provided that this exclusion shall not apply to liability that would have attached to such **Organisation** in the absence of such contract; or



- (II) based upon, arising from, or in consequence of:
- (a) any deliberately fraudulent act or omission or any willful violation or breach of any law, regulation or by-law anywhere in the world or duty imposed by any such law, regulation or by-law by an **Organisation**; or
 - (b) an **Organisation** having gained any profit, remuneration or advantage to which such **Organisation** was not legally entitled,

provided that this exclusion shall not apply including, for the avoidance of doubt, to the Company's obligation to advance **Defence Costs** until a final adjudication in any proceeding establishes such a deliberately fraudulent act or omission, willful violation or breach, personal profit, remuneration or advantage. The term 'proceeding' shall not include any declaratory proceeding brought by or against the Company.

5. SEVERABILITY – IMPUTATION OF KNOWLEDGE

With respect to the exclusions 4.A (viii) of this **Coverage Section**, in order to determine if coverage is available no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**.

With respect to exclusion 4.B (ii) of this **Coverage Section**, only facts pertaining to and knowledge possessed by any chairman, chief executive officer, managing director, in-house general counsel, company secretary, chief financial officer or holder of any equivalent position in any jurisdiction of an **Organisation** shall be imputed to such **Organisation** in order to determine if coverage is available.

6. PRESUMPTIVE INDEMNIFICATION

If an **Organisation** is permitted or required by law to indemnify, or is not prevented by law from indemnifying, an **Insured Person** for **Loss** but fails or refuses, other than due to **Financial Impairment**, to so indemnify an **Insured Person** then the Company shall pay such **Loss** on behalf of such **Insured Person** subject to all the Exclusions of this Coverage Section. In such event the applicable Deductible Amount set forth in Item 3 of the Schedule shall be paid by an **Organisation** to the Company. No Deductible shall apply in the event of **Financial Impairment**. This section does not apply to **Loss** arising out of an **Outside Directorship**.

7. PRIORITY OF PAYMENTS

In the event payment of **Loss** is due under this Coverage Section but the amount of such **Loss** in the aggregate exceeds the remaining available Limit of Liability for this coverage section, the Company shall:

- A. first pay such **Loss** for which coverage is provided under Insuring Clause 1.A of this Coverage section; then
- B. to the extent of any remaining amount of the Limit of Liability available after payment under a. above, pay such **Loss** for which coverage is provided under any other Insuring Contract of this Coverage Section.

Except as otherwise provided in this section, the Company may pay **Loss** as it becomes due under this Coverage Section without regard to the potential for other future payment obligations under this Coverage Section.