



# Associations Liability

(For Sporting Bodies, Associations & Clubs)

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**Policy Wording**

*[sportscover.com](http://sportscover.com)*

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# Policy Information

## Policy Terms and Conditions

This part of the document contains the Policy terms and conditions, which detail all the terms, conditions and exclusions relating to the Policy.

In addition to the Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with these Policy terms and conditions.

The Policy terms and conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Broker or search for a Broker near You at [www.sportscover.com](http://www.sportscover.com).

## Your Duty of Disclosure – The Things You Need to Tell Us

Under the Insurance Contracts Act 1984 (Cth), You have a Duty of Disclosure. You are required before You enter into, renew, vary, extend or reinstate Your Policy, to tell Us everything You know and that a reasonable person in the circumstances could be expected to know, that is a matter relevant to Our decision whether to insure You, and/or anyone else to be insured under the Policy.

### You do not have to tell Us about any matter

- (a) That diminishes the risk;
- (b) That is of common knowledge;
- (c) That We know or should know in the ordinary course of Our business as an insurer; or
- (d) Which We indicate We do not want to know.

### If You do not tell Us

If You do not comply with Your Duty of Disclosure We may refuse or deny any Claim you make and/or cancel the Policy. If You fraudulently keep information from Us or deliberately make false statements We may avoid Your contract and treat Your insurance as if it never existed.

# General Insurance Code of Practice

Sportscover Australia and Underwriters at Lloyd's are proud supporters of the General Insurance Code of Practice. Together with Lloyd's we aim to provide high quality service to Australian Policy holders in all aspects of interaction with them. A copy of this Code can be found at <http://codeofpractice.com.au>.

## Complaints and Dispute Resolution

In accordance with the Code of Practice, we have established procedures for dealing with complaints and disputes regarding your policy or claim.

### Step 1

Any enquiry or complaints relating to our policies or claims should be addressed to:

**Sportscover Australia Pty Ltd**

Compliance Department

Locked Bag 6003

Wheelers Hill Victoria 3150

Or

**Email: [idr@sportscover.com](mailto:idr@sportscover.com)**

The Company will review your complaint and respond to this within 15 business days from receipt of the complaint, provided we have all necessary information and have completed any investigation required. Where further information, assessment or investigation is required, we will agree to reasonable alternative timeframes with you.

### Step 2

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact the Lloyd's Underwriter's General Representative in Australia at:

**Lloyd's Australia Limited**

Level 9

1 O'Connell Street

Sydney NSW 2000

Telephone: (02) 8298 0700

Fax: (02) 8298 0788

Or

**Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)**

### Step 3

At any point, you may contact the Financial Ombudsman's Service (FOS) to request assistance with your complaint. If after consideration by Sportscover and the Lloyd's Underwriters' General Representative in Australia you are not satisfied, FOS will review the complaint with a final determination which is binding on Sportscover.

You may contact the **Financial Ombudsman Service (FOS)** at:

**Postal address:** Financial Ombudsman Service Limited  
GPO Box 3  
Melbourne VIC 3001  
(Australia)

**Hours:** 9am - 5pm Melbourne time weekdays

**Telephone:** 1300 78 08 08 or 03 9613 7366

**Fax:** 03 9613 6399

**Email:** [info@fos.org.au](mailto:info@fos.org.au)

**Website:** [www.fos.org.au](http://www.fos.org.au)

Retail and wholesale clients not eligible for referral to the FOS, may be eligible for referral to the Financial Ombudsman Service (UK). Such referral must occur within 6 months of the final decision by the **Policyholder & Market Assistance Department at Lloyd's**.

## Privacy

The Privacy Act 1988 and its amendments seeks to ensure the confidentiality, accuracy and security of any personal information we may collect, use or disclose.

The Sportscover Australia Privacy Policy, details how we will comply with our Privacy obligations regarding personal information we hold, use or collect. It is available on request and can be accessed on the Sportscover Website [www.sportscover.com](http://www.sportscover.com).

You have the right to access and correct Your personal information held by Sportscover Australia Pty Ltd. If You would like to do this, please contact Sportscover Australia Pty Ltd on 03 8562 9100. Further information regarding this process can be found on the Sportscover Australia website.

## How to make a Claim

If an event giving rise to a claim under this [Policy](#) occurs please provide details as soon as practically possible by contacting [Your](#) broker or the Claims Department:

Sportscover Australia Limited  
Level 1, 271-273 Wellington  
Road Mulgrave, Victoria  
Australia, 3170

Telephone: +61 (0)3 8562 9100  
Fax: +61 (0)3 8562 9111  
Email: [asiapac.claims@sportscover.com](mailto:asiapac.claims@sportscover.com)

## **Insurer**

The Policy is underwritten by certain Underwriters at Lloyd's.

## **Our Agreement with You**

This Policy is a legal contract between You and Us. You pay Us the premium, and We provide You with the cover You have chosen as set out in the Policy Schedule and wording for events occurring during the Period of Insurance shown on Your Policy Schedule or any renewal period. The amount of any Deductible that applies to Your Policy will be shown on Your Policy Schedule.

**The exclusions in the section(s) headed 'When You are not covered' and conditions in the section(s) headed 'General Conditions' apply to this Policy. Your Policy consists of the Policy terms** and conditions in this document and the Policy Schedule You receive.

Please read Your Policy carefully, and satisfy yourself that it provides all the cover You require. It is an important document and You should keep it in a safe place with all other papers relating to this insurance.

## **Other Interested Parties**

You must tell Us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if You have told Us about them and We have noted them on Your Policy Schedule.

## **Paying Your Premium**

You must pay Your premium prior to the commencement of this Policy or by the due date. If We do not receive Your premium by this date or Your payment is dishonoured this Policy will not operate and there will be no cover.

## **Preventing Our Right of Recovery**

If You have agreed not to seek compensation from another person who is liable to compensate You for any Loss, damage or liability which is covered by this Policy, We will not cover You under this Policy for that Loss, damage or liability.

## **Fraudulent Claim**

If You make any application for indemnity under this Policy knowing that such application for indemnity is false or fraudulent, Your right to indemnity in respect of such Claim shall be void.

## **Subrogation**

We shall be entitled to Claim indemnity or contribution at any time in Your name from any party against whom You may have rights provided always that We shall not exercise any subrogation rights of recovery against any of Your Employee(s) or former Employee(s) unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee(s) or former Employee(s).

## **Other Insurance**

In the event of a Claim in respect of which indemnity is granted under this Policy and in respect of which some other person(s) or entity has taken out a Policy(ies) of insurance with Us and is also entitled to indemnity under this Policy, We shall only be liable to pay all such Insureds under all such policies in respect of such Claim, an amount in aggregate not greater than the largest Limit of Indemnity of any one of such policies.

## **Currency**

All premiums and Claims (if any) are payable at the place and in the currency of the country where the Policy was issued.

## **Proper Law of the Policy**

This insurance shall be governed by the law of the territory, state or country in which the Policy was issued and whose courts shall have jurisdiction in any dispute arising hereunder. For the purpose of this condition the place of issue in the Policy Schedule shall be conclusive.

## **Cancellation**

This Policy may be cancelled at any time at Your request in which case We will retain premium calculated at the short period rate for the time the Policy has been in force less Our administration fee. This calculation shall be made on a seasonal risk basis. We may cancel this Policy in accordance with the Insurance Contracts Act 1984 (as amended).

If however You request the cancellation of this Policy and We have been notified of a Claim or a pending Claim against this Policy, We will retain 100% of the premium.

## **Deductible**

Our liability for any one Loss shall only apply to that part of each Loss which is in excess of the Deductible specified in the Policy Schedule and such Deductible shall be borne by You at Your own risk.

Unless otherwise expressed in the Policy Schedule, all Deductibles in respect of Claims are inclusive of Defence Costs up to the amount of the Deductible.



# General Provisions

## General Definitions

Throughout the Policy there are words that have special meanings. These words are:

**Abuse** means physical, sexual or psychological behaviour that may include:

- (a) Behaviour which sexualises the victim and uses the victim for sexual gratification;
- (b) The sexual interaction between two minors if there is a perceived difference in power between the victim and the abuser;
- (c) The imposition of an excessively harsh regime through which there is systematic assault or maltreatment of the victim over a period of time; this would not include a single incidence of physical assault;
- (d) The deliberate pre-meditated maltreatment by an individual in a position of responsibility
- (e) Molestation, Harassment, Rape

but excludes schoolyard and workplace bullying, treatment/nursing malpractice or any error or omission in the provision of nursing or care/treatment.

**Accountant or Registered Tax Agent** means a person who is not an Insured and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by You for the purpose of preparing, or supervising the preparation, of or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office, in respect of Your liability to pay tax.

**Act of Terrorism** means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Aircraft** means any vessel, craft, Vehicle, kite, hang glider, balloon or other appliance whether heavier or lighter than air used for recreational flying aerial sports or to transport persons or property. The term Aircraft includes any related appurtenances or equipment such as parachutes.

**Associated Entity** means any Associated Entity whether it be a Corporation or any other type of Entity in which You own, on or before the inception of the Period of Insurance, more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its Subsidiaries.

**Association** means:

- (a) the Insured or entities specified in the Policy Schedule; and
- (b) any Subsidiary as defined in existence at the commencement of the Period of Insurance.

**Benefits** means any amount payable to a beneficiary of a Fund by the Trustee under the rules governing the Fund.

**Business** means a sporting club and member of the sporting association designated in the schedule. The said business includes all activities connected with the sport including responsibilities as landlord, tenants, property owners and organisers of social and fund-raising activities.

**Category 4 Sports** means Gridiron, Rugby, Rugby League, Soccer, Australian Rules, Kick Boxing, Boxing, Martial Arts and all other contact sports.

**Claim** means any originating process (including in a legal proceeding or arbitration), cross claim or counter claim or third party claiming compensation against and served on an Insured. All Claims which arise out of or are attributable to or are in any way connected with a single Wrongful Act, Employment Practice Breach or Trustee Breach shall constitute a single Claim for the purposes of this Policy. A single Wrongful Act, Employment Practice Breach or Trustee Breach means all respective Wrongful Acts, Employment Practice Breaches or Trustee Breaches which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.

**Claims Made** means any Claim made during the actual Period of Insurance.

**Coaches and Referees** means any of Your Coaches, Referees or Members who are accredited and qualified in accordance with the requirements of the Sport nominated in the Policy Schedule and/or a person with a minimum of coaching or refereeing experience in the nominated Sport indicated in the Policy Schedule.

**Committee** means:

- (a) Any auxiliary Committee, foundation, trust (other than a superannuation trust), or Fundraising Committee;
- (b) Any disciplinary, examining or research body or Committee;
- (c) Any sporting or social club Committee.

**Credit Arrangement** means any credit agreement, extension of credit, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt.

**Deductible** means the amount You first bear in relation to any Claim under this Policy. The Deductible applies to all amounts payable under this Policy including the indemnity provided under defence of claims.

**Defence Costs** means that part of Loss consisting of reasonable costs, charges, fees (including but not limited to legal counsel's fees) and expenses reasonably incurred by You, with Our prior written consent in investigating or defending a Claim but does not include regular or overtime wages, salaries or fees of Your directors, Officers or Employees incurred in attending, defending, investigating or monitoring Claims. In respect of [Automatic Extension 10](#) under [Part 3](#), it means the costs of Your reasonable legal representation reasonably required for the attendance at any official investigation, examination or inquiry.

**Direct Financial Loss** means Direct Financial Loss to You directly caused by the Loss of Money, Securities or other tangible property:

- (a) Owned by You; or
- (b) In Your care, custody or control and for which You are legally liable.

Direct Financial Loss does not include wages, salaries or other remuneration or Benefits paid by You to directors, Officers and Employees, or any amount excluded by the exclusions applicable to Insuring Clause 3.5. All Direct Financial Loss caused by multiple Dishonest Acts that are related, or are part of a series of such conduct that is not entirely unconnected and entirely different, shall be a single Loss for the purpose of cover under Insuring Clause 3.6.

**Disclosure Document** means any prospectus, information memorandum, registration statement or similar document regardless of whether or not it has been, or is required to be, filed or registered with the Australian Securities and Investments Commission or any other similar authority in any other jurisdiction.

**Discovered or Discovery** means when any director or Officer (who is not in collusion with an Employee who has committed or is attempting to commit a Dishonest Act) becomes aware of any facts which would cause a reasonable person to assume that a Direct Financial Loss which may be covered by this Policy has been or may be incurred, even though the exact amount or details of the Direct Financial Loss are not known at the time of Discovery. Such Discovery constitutes Discovery by every Insured.

**Discovery Period** means the period of time specified in Automatic Extension 5 under Part 3, during which time written notice may be given to Us of any:

- (a) Claim which is first made against You for a Wrongful Act committed or allegedly committed;
- (b) Direct Financial Loss which is first Discovered and results from Dishonest Acts committed prior to the end of the Period of Insurance.

**Dishonest Acts** means any fraudulent or Dishonest Acts committed by an Employee (acting alone or in collusion with others) with the principal intent to cause You to sustain a Direct Financial Loss and results in the Employee making an improper financial gain for themselves or for any other individual or organisation intended by the Employee to receive such gain.

**Document(s)** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, Money or any negotiable instrument.

**Employee** means:

- (a) Any person who is a past, present or prospective Employee;
- (b) In respect of Insuring Clause 3.4 only, any person who is a present Employee; including any full-time, part-time or casual Employee.

Employee includes directors, Officers, volunteers, but not consultants, independent contractors, secondees to or agents or their respective Employees (including the Employees of labour-hire agencies).

**Employment Practice Breach** means any Wrongful Act in relation to any of the following employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, discrimination, harassment, defamation, invasion of privacy, which relate solely to You and Your present or prospective Employees.

**Employee Related Benefits** includes but is not limited to:

- (a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- (b) stock, shares, stock options, share options or any entitlement or right under any Employee plan of any description;
- (c) participation in any stock, share option or share option plan, or participation in any Employee plan of any description;
- (d) severance or redundancy payments or entitlements;
- (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- (f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- (g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.
- (h) any amount You pay or are ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract.

**Fund** means any charity or charitable foundation.

**Fungus, Mildew and Mould** means but is not limited to, any form or type of Mould, Mildew, mushroom yeast or bio-contaminant. Spore(s) includes but is not limited to, any substance produced by, emanating from, or arising out of any Fungus/fungi.

**Indemnity Limit(s)** means the amount(s) specified in the Policy Schedule.

**Industrial Instrument** means:

- (a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
- (b) any other collective agreement;

which regulates the terms and conditions of employment.

**Period of Insurance** means the period specified in the Policy Schedule.

**Insured** means:

- (a) The Club, the Association or entities specified in the Policy Schedule;

- (b) Coaches and Referees;
- (c) Any of Your directors, executive officers, committee members, office-holders, Employees or
- (d) Office Bearers but only whilst acting within the scope of their duties in such capacity;
- (e) Any of Your registered Members or voluntary workers but only whilst acting in connection with Your Business activities and whilst conforming to Your rules and by-laws. Such Member or voluntary worker shall only be entitled to indemnity hereunder to the extent that said Member or voluntary worker is not entitled to indemnity under any other policy of insurance;
- (f) Any owner of plant in respect of the hire of said plant to You but only to the extent required under written hiring contract or agreement.

**Known Circumstances** means any circumstance or circumstances of which the Insured had become aware prior to the Policy inception and which the Insured or a reasonable person of the Insured's profession would at any time prior to the Policy inception have considered may give rise to a Claim or Claims against the Insured.

**Landing Area** means any part of Earth's surface including water or any structure or property used for embarkation or disembarkation of people or loading or unloading of goods or where aircraft are kept, housed maintained or operated and where aircraft may take off and land.

**Litigation** includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, inquiry, arbitration or adjudication.

**Loss** means the total amount which a person or entity becomes legally obliged to pay on account of a Claim. Loss includes, but is not limited to damages, judgments, settlements, costs and Defence Costs. However, Loss does not include:

- (a) fines or penalties (whether civil or criminal) imposed by law, punitive, aggravated, exemplary or multiple damages, or matters uninsurable under the laws governing this Policy;
- (b) taxes, duties, rates, levies, charges, fees or any other revenue raising measure;
- (c) back pay, or any compensation or damages calculated by reference to the back-payment of remuneration, where You are ordered by the relevant court or tribunal to reinstate the Claimant as an Employee;
- (d) front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where You are ordered by the relevant court or tribunal to reinstate the Claimant as an Employee but refuse or fail to do so for whatever reason;
- (e) Employee Related Benefits or amounts calculated by reference to any Employee Related Benefits;
- (f) costs incurred by You to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person;

- (g) costs incurred by You in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any Employment Practice Breach;
- (h) Benefits; or
- (i) Amounts ordered to be paid pursuant to a determination by a Court, Commission or other tribunal in relation to an unfair contract.

For the purpose of Insuring Clause 3.5, Loss means only Tax Audit Costs.

For the purpose of Insuring Clause 3.6, Loss means only Direct Financial Loss.

**Medical Persons** means medical doctors, nurses, physiotherapists, dentists and certified first aid attendants.

**Member** means any Member, temporary player or other person actively engaged in and appropriately registered for the purpose of playing the Sport named in the Policy Schedule.

**Money** means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, Money orders and bullion.

**Not for Profit Entity** means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.

**Occurrence** means an event, including continuous, repeated exposure to substantially the same general condition, which results in Personal Injury or Property Damage, neither expected nor intended from Your standpoint.

**Officer(s)** means any secretary or Office Bearer, and any Employee who is concerned in, or takes part in, the management of Your Business regardless of the name that is given to their position.

**Office Bearer(s)** means any of Your past, present or future directors, Committee members, secretary, Officers, Employees and volunteers or any Trustees, or any natural persons who by virtue of any applicable legislation or law is deemed to be a director or Officer.

Office Bearer(s) does not include:

- (a) a receiver, receiver and manager, official manager, liquidator, administrator, Trustee or other person administering a compromise or scheme of arrangement made between You and any other person or persons;
- (b) for the purpose of Insuring Clauses 3.1 and 3.3, any Employee or volunteer while not acting in the management of the Association or as a Trustee;
- (c) any Association, organisation or other body corporate.

**Outside Entity** means any Associated Entity or any Entity named in the Proposal (other than any Entity specified in the Policy Schedule). Outside Entity also means any other corporation, partnership, joint venture or organisation which has been listed by endorsement to this Policy.

**Personal Injury** means:

- (a) Bodily injury including death and illness, disability, shock, mental anguish and injury;
- (b) Wrongful detention, unlawful arrest or false imprisonment;
- (c) Wrongful entry or eviction or invasion of privacy;
  
- (d) Assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

**Policy** means this Policy wording, the Policy Schedule and any endorsement attaching to and forming part of the Policy either at commencement or during the Period of Insurance.

**Pollutants** means any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

**Property Damage** means accidental loss of or damage to tangible property and includes resultant loss of use of such damaged property.

**Product(s)** means any property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured.

**Products Hazard** means any liability of the Insured indemnifiable under Insuring Agreement (1) which arises directly or indirectly out of a Product or any defect or failure thereof.

**Proposal** means the written Proposal made to Us together with any attachments and material referred to therein.

**Qualified** shall mean that person has appropriate qualifications or registration or accreditation or authorization from The Insured body.

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

**Securities** for the purposes of the cover in, and terms of this Policy applicable to, Insuring Clause 3.4 means any negotiable or non-negotiable instruments or contracts representing Money or other property, but excluding Money. For the purposes of the other terms, conditions and exclusions of this Policy, Securities means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

**Statutory Liability** means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- (a) an Office Bearer for any civil offence or criminal proceeding;
- (b) an Office Bearer for a strict liability offence in connection with the discharge, dispersal, release or escape of Pollutants; and
- (c) You for a strict liability offence in connection with a breach of occupational health and safety law or regulation ("OH&S"),

but does not include pecuniary penalty, that We are prevented by law, from paying.

**Subsidiary** means any entity in which You own or control, directly or indirectly, in any combination, more than 50% of the outstanding Securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be Your Subsidiary under any applicable legislation, law or Australian Accounting Standard. Subsidiary does not include any club or Association or other like entity over which You exercise control but do not elect a board.

**Tax Audit Costs** means any reasonable fees, charges or disbursements of an Accountant or Registered Tax Agent or any other consultant who is not an Office Bearer engaged by or replacing the Accountant or Registered Tax Agent, for work undertaken in response to a Tax Audit Notice. Tax Audit Costs does not extend to include any tax or penalties to be paid.

**Tax Audit Notice** means any notification from the Australian Taxation Office relating to Your liability to pay income tax, fringe benefits tax, capital gains tax, GST, superannuation payments tax, termination payments tax or sales tax (including the amount of any such tax) only.

**Territorial Scope** means:

- (a) anywhere in the Commonwealth of Australia and New Zealand, and
- (b) anywhere in the world but only in respect of:
  - i. your Products exported from the Commonwealth of Australia or New Zealand, and
  - ii. visits by the Insured for the purpose of playing or administering The Business of the Insured or the sport nominated in the Schedule but only whilst acting in connection with club activities and whilst conforming to club rules and by-laws.

**Trustee** means any of Your Office Bearers if validly appointed to act, and while acting in the capacity, as a Trustee of a Fund.

**Trustee Breach** means any Wrongful Act committed or allegedly committed:

- (a) by an Office Bearer in their capacity as a Trustee, or as a director or Officer of the Association acting as corporate Trustee;
- (b) by the Association acting in its capacity as corporate Trustee;
- (c) by any other person for which an Office Bearer referred to in (a) or the Association referred to in (b) is legally liable;

but only in respect of the administration of a Fund.

**Transaction** means any one of the following events:

- (a) the Association consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the Association or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the Association.

**Vehicle** means any type of conveyance of goods or personnel, including a caravan or trailer, which is intended to be propelled other than by manual or animal power.



**War** means undeclared war, civil war, insurrection, rebellion, revolution, war-like act by military force or military personnel, destruction or seizure or use for a military purpose, and including any consequences of any of these.

**Watercraft** means any vessel, craft, Vehicle or appliance made or intended to float on or in or travel on or through or under water.

**We/Us/Our** means Sportscover Australia Pty Ltd under an authority from the Insurer.

**Wrongful Act** means any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by:

- (a) for the purpose of Insuring Clauses 3.1, any Office Bearer, individually or otherwise, solely because of their status as such in the course of his or her duties to the Association or Outside Entity. It does not include the conduct in (c) below; or
- (b) for the purpose of Insuring Clauses 3.2, the Association.
- (c) for the purpose of Insuring Clause 3.6, You but solely while acting in a professional capacity in the conduct of the Business.

**You/Your** means the Insured.

## General Conditions

### 1. Assignment

You must not assign the Policy or any rights under the Policy without Our prior written consent by way of endorsement to the Policy.

### 2. Claims Co-operation

- (a) You shall, at Your own cost, frankly and honestly provide Us with all information and assistance required by Us and/or the lawyers and investigators and others appointed by Us in relation to the Claim or Loss. Any unreasonable failure to comply with this obligation may entitle Us to deny liability under the Policy in whole or in part.
- (b) You shall, at Your own cost, do all things reasonably practicable to minimise any Loss, including but not limited to Your liability in respect of any Claim.
- (c) No admission, offer, promise or payment shall be made or given by or on Your behalf without Our written consent.

### **3. Claims Defence & Settlement**

- (a) Unless otherwise agreed, We shall assume the legal defence of any Claim covered under this Policy in Your name and We shall have full discretion in managing the defence of any Claim, and any negotiation or proceeding as to the resolution of such Claim. In exercising such discretion, We will act in utmost good faith towards You in the conduct, negotiation and settlement of any Claim.
- (b) We shall appoint the lawyers that will defend and represent You in respect of any Claim. Those lawyers remain at all times able to report all information obtained from You to Us and remain at all times able to advise Us on all issues, including Your right of indemnity under the Policy. You have no right to claim or assert any form of client privilege in respect of all information provided to lawyers appointed by Us in respect of any Claim covered under this Policy.
- (c) Subject to the matters in (a) above, We shall be entitled to settle a Claim if We so choose.
- (d) You agree not to admit liability for or settle any Claim, make any admission, offer any payment or assume any obligation in connection with any Claim, or incur any Defence Costs in connection with any Claim, without Our written consent.
- (e) We shall not be liable for any settlement, Loss, Defence Costs, admission, offer, payment or assumed obligation to which We have not given Our written consent.
- (f) If We are of the opinion that a Claim will not exceed the Deductible, We may, at our sole discretion, require You to conduct the defence of the Claim. If the Defence Costs and/or any other payment exceed the Deductible then, subject to the terms and conditions of the Policy, We will pay the amount in excess of the Deductible.

### **4. Claims Notification**

In relation to [Part 1](#), You shall give Us immediate notice in writing of:

- (a) every Occurrence, Claim, Writ, Summons, Proceedings, impending prosecution inquest and all information in relation thereto in respect of which there may arise liability covered by the Policy;
- (b) every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of any of Your Officers.

In relation to [Part 2](#) and [Part 3](#), You shall within the Period of Insurance noted in the Policy Schedule give to Us immediate notice in writing of:

- (a) every Occurrence, Claim, Writ, Summons, Proceedings, impending prosecution inquest and all information in relation thereto in respect of which there may arise liability covered by the Policy.

- (b) every change materially varying any of the facts or circumstances existing at the commencement of this insurance that shall come to the knowledge of any of Your Officers.

## **5. Inspection**

We shall be permitted but not obliged to inspect Your property and operations at any time. Neither Our right to make inspections nor the making thereof nor any report thereon shall amount to a determination or warranty by Us that such property or operations are safe. We may examine and audit Your books and records at any time during the Period of Insurance and extensions thereof within three years after the final termination of the Policy, as far as they relate to the subject matter of this Policy. If You do not provide to Us details or access as We may reasonably request, We may refuse to pay or reduce the amount of a Claim.

## **6. Sanctions**

We shall not provide any cover nor shall We be liable to pay any claim or provide any benefit under this Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us 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.

## **7. Several Liability Notice**

We **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.

## **General Exclusions**

This Policy excludes Loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the Loss from:

### **1. Aircraft, Aircraft products, Watercraft and Hovercraft**

Liability arising out of the ownership, maintenance, operation, preparation or use by You or on Your behalf of:

- (a) any Aircraft or Hovercraft, or
- (b) any Landing Area for Aircraft provided such liability arises out of such use as a Landing Area, or
- (c) any Watercraft or vessel exceeding 8 metres in length; but this General Exclusion 1 (c)

(d) shall not apply with respect to operations by independent contractors.

## **2. Assumed Liability**

Any Claim arising from or directly or indirectly attributable to or in consequence of any duty or obligation assumed by the Insured by way of warranty, guarantee, indemnity, contract or agreement, unless the Insured would have incurred the liability in the absence of such warranty, guarantee, indemnity, contract or agreement.

## **3. Criminal assault and battery, harassment and Abuse**

Any Claim brought about or contributed to by:

- (a) Any dishonest, fraudulent, criminal or malicious act or omission by You or on behalf of any person at any time employed by You.
- (b) Personal Injury or Property Damage caused by or arising from assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or property.
- (c) Abuse, Molestation, Rape.

## **4. Employment Liability**

Liability for Personal Injury to any person:

- (a) arising out of or in the course of employment by You, including employment deemed by law, where You are required by law to insure or otherwise fund, whether through self - insurance, a statutory fund or other statutory scheme, all or part of Your liability for damages at common law for such Personal Injury; or
- (a) arising out of or in respect of an Employment Practice Breach.

## **5. Fines, Penalties, Punitive Damages and Guarantees**

Any liability against You to pay:

- (a) Any form of performance, surety, credit or financial guarantee;
- (b) Any award for liquidated, punitive, aggravated or exemplary damages including all Fines and Penalties;
- (c) Any Fines and/or Penalties imposed by law.

## **6. Fraudulent, Dishonest and Wilful Conduct**

Any Claim arising from or in any way connected with You:

- (a) gaining any personal profit or advantage to which You are not legally entitled;
- (b) having improperly benefited from any Securities transaction as a result of information that is/was not available to other sellers or purchasers of such Securities;
- (c) committing any dishonest, fraudulent, criminal, malicious or reckless act;
- (d) committing any wilful violation or wilful breach of any statute or regulation; or
- (e) improperly using their position to cause detriment to the Association.

For the purpose of determining the applicability of these exclusions, Your conduct and knowledge shall not be imputed to any other Insured. In relation to any Claim under [Part 3](#), Management Liability, Insuring [Clauses 3.1 \(a\)](#) or [3.3](#), these exclusions shall only apply if it is established through a judgment or any other final adjudication adverse to You, or any admission by You, that the relevant conduct did in fact occur.

## **7. Fungus Mildew and Mould**

Any liability directly or indirectly arising from Fungus, Mildew and Mould. Such exclusion shall include but not be limited to:

- (a) Personal Injury, Property Damage or medical payments or any advertising Loss arising out of, resulting from, caused by, contributed to or in any way related to the existence, inhalation or exposure to any Fungus/fungi and/or Spore(s);
- (b) Any cost or expenses associated in any way, or arising out of the abatement, mitigation, remediation, containment, detoxification, neutralisation, monitoring, removal, disposal, or any obligation to investigate or assess the presence or effects of any Fungus/fungi or Spore(s); or
- (c) Any obligation to share with or repay any person, organisation or entity related in any way to items (a) and (b) above regardless of any other cause, event, material, product and or building component that contributed concurrently or in any sequence to the Personal Injury or Property Damage.

## **8. Illness**

Any Claim arising directly or indirectly from any injury (including emotional distress or mental trauma) Loss or damage which is actually or allegedly caused by contributed to by or in any way related to:

- (a) The Acquired Immune Deficiency Syndrome (AIDS) or its pathogenic agents and/or any blood related disease, Hepatitis C or Cancer in any form howsoever acquired;
- (b) Tobacco or tobacco smoke;

- (c) Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

## **9. Policy Jurisdiction**

Any Claim:

- (a) Made in or determined outside Australia or New Zealand; or
- (b) Arising out of the enforcement of any judgment, order or award obtained outside Australia or New Zealand.

## **10. Pollution**

Any Claim arising from or in any way connected with:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise Pollutants.

## **11. Prior Known Facts**

Any Claim(s) arising out of or in any way connected with any:

- (a) actual or alleged facts which were known to You prior to the commencement of the Period of Insurance and which You knew or ought reasonably to have known might give rise to a Claim;
- (b) actual or alleged facts which could have been or which can be notified under any Policy existing prior to the commencement of the Period of Insurance;
- (c) pending or prior Litigation, or Litigation derived from the same or essentially the same facts as are or might be alleged in such pending or prior Litigation, as at the commencement of the Period of Insurance;
- (d) any fact or matter referred to in the Proposal, no matter how it is recorded or expressed therein; or
- (e) any contingent liability noted in Your Financial Statements.

## **12. Product Liability**

Under [Part 2 Professional Indemnity](#) and [Part 3 Management Liability](#), any Claim or liability arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by You.

## **13. Radioactivity**

Any claim arising from or in any way connected with:

Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

This Policy also excludes any Loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

## **14. Vehicles**

Personal Injury or Property Damage arising out of the ownership, possession, operation, or use by You or on Your behalf of any Vehicle:

- (a) which is registered or required under any legislation to be registered, in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is affected) except where such Personal Injury or Property Damage is caused by:
  - i. the loading or unloading of any Vehicle or the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any carriageway or thoroughfare;
  - ii. the use of any mechanical tool or plant attached to or forming part of any vehicle whilst the Vehicle is being used at Your Premises or another work site for the purposes of Your Business but not whilst the Vehicle is in transit or is being used for transport or haulage;
- (b) where such Personal Injury or Property Damage is insured or required to be insured by any legislation or competent authority.

## **15. War and Terrorism**

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil War, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority, or
- (b) Any Act of Terrorism.

# Part 1: General Liability

## Insuring Clauses for Part 1

### The Cover

In consideration of the payment of the premium stated in the Policy Schedule and in reliance on the particulars and statements made in the Proposal referred to in the Policy, We will to the extent and in the manner provided in this Policy:

- 1.1** Indemnify **the Insured's** legal liability to pay Compensation for Personal Injury or Property Damage that happens during the Period of Insurance arising from an Occurrence in connection with the Business within the Territorial Scope up to a maximum of the respective limits of indemnity for General Liability and Products Hazard as stated in the schedule. The total aggregate liability for Products Hazard during any one period of insurance will not exceed the limit of indemnity;
- 1.2** Indemnify the Insured for the legal advisors fees and court costs involved in defending any Claims against the Insured to the extent that such claims fall within the terms and indemnity limits provided for in [1.1](#) above. The Company shall have the right but not the obligation to appoint legal representatives and conduct the defence of any such Claim, investigation, negotiation and settlement thereof as We consider expedient;
- 1.3** Reimburse the Insured for all reasonable expenses, other than wages, loss of earnings or profits, incurred with the consent of the Company in connection with (2) above.

Indemnity or reimbursement provided under Insuring Clauses [1.2](#) and [1.3](#) above shall be payable in addition to the applicable limits of indemnity stated in the Policy Schedule.

## Limit of Indemnity for Part 1

Our maximum liability in respect of any one Occurrence under this Part 1 shall not exceed the Limit of Indemnity specified in the Policy Schedule. Our total aggregate liability for all Occurrences arising out of Your Products during any one Period of Insurance will not exceed the Limit of Indemnity specified in the Policy Schedule.

## Additional Exclusions for Part 1

In addition to the General Exclusions the following exclusions are applicable to [Part 1](#) of the Policy:

This Policy excludes Loss, damage, destruction, death, Personal Injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the Loss:



## **1. Asbestos**

Any actual or alleged liability whatsoever for any Claim or Claims in respect of Loss or Losses directly or indirectly arising out of, resulting from, in consequence of, contributed by asbestos in whatever form or quantity.

## **2. Category 4 Sports**

Any Personal Injury caused, or contributed to, by any participant to any other participant whilst participating in a match or practice of any Category 4 Sports unless specified in the Policy Schedule.

## **3. Childcare**

Any liabilities arising directly or indirectly from the operation of a child minding facility, fee paying or otherwise, unless declared to, and agreed by Us.

## **4. Collapse of Boilers/Pressure Vessels**

Any liabilities arising directly or indirectly from explosion or collapse of boilers or other vessels under pressure in respect of which a certificate is required to be issued under the terms of any relevant statute or regulation.

## **5. Computer Equipment**

Any liability arising anywhere in the world in relation to, caused by, or contributed to, directly or indirectly, or howsoever arising from:

- (a) Total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment,
- (b) Error in creating, amending, entering, directing, deleting or using computer equipment, or
- (c) Total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.

## **6. Contractual Liability**

Liability assumed under a contract or agreement unless You would have been liable in the absence of such contract or agreement.

## **7. Economic Loss**

Economic or pecuniary Loss where no Personal Injury or damage to tangible property occurs.

## **8. Products Liability**

Liability for costs arising out of the costs incurred in or in connection with the repair, reconditioning, replacement, removal, recalling or guarantee of any Product or component part.

## 9. Professional Liability

The rendering or failure to render professional advice or service by You or any error or omission connected therewith provided that this exclusion does not apply to the rendering of first aid or medical services on Your premises by Medical Persons employed by You.

## 10. Property Construction

Any liabilities arising directly or indirectly out of or caused by or in connection with:

- (a) The erection, demolition, alteration of and/or addition to buildings by or on Your behalf except an erection, demolition, alteration of and/or addition to buildings not exceeding a total cost of \$50,000; and/or
- (b) Demolition of a building or structure exceeding 10 metres in height; and/or
- (c) Vibration or removal of or weakening of or interference with support to land, buildings or any other property.

## 11. Property Damage

- (a) Property owned, leased, hired by or under a hire purchase, or loaned to You; or
- (b) Property in Your physical or legal control.

But this exclusion does not apply to liability for Property Damage to:

1.
  - (a) Premises (including **landlord's fixtures and fittings**) which are leased or rented to You for the purposes of the Sport noted in the Policy Schedule; and
  - (b) Premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein;
2. Vehicles (not belonging to or used by You) in Your physical or legal control where the Property Damage occurs while the Vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward;
3. The property of Your Employee(s);
4. Other property temporarily in Your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working on and Our limit under this Exclusion 11(b)4 does not exceed \$50,000 for any one Occurrence and in the aggregate for any one Period of Insurance;

Provided that We will not cover You under this Policy in respect of liability assumed by You under any contract or agreement which requires You to effect material damage insurance on premises, property or goods which You do not own.

## **12. Solarium Use**

Any liability directly or indirectly arising from:

- (a) The use or intended use of any apparatus which can be used for the purpose of artificial sun tanning;
- (b) The presence of artificial sun tanning equipment on Your property.

## **13. Welding Operations**

Claims caused by or arising out of arc or flame cutting, flame heating, arc or gas welding or similar operation in which welding equipment is used, unless such activity is conducted in strict compliance with the Australian Standard 1674-1990 (Fire Precautions in cutting, heating and welding operations) or similar issued by the Standards Association of Australia.

# **Additional Conditions for Part 1**

## **1. Joint Insureds**

The inclusion of more than one person or organisation as Insured under the Policy shall not in any way preclude the right of any one Insured person or organisation to claim against another. This provision however shall not under any circumstances operate to increase or aggregate the Limits of Indemnity stated in the Policy Schedule.

## **2. Payment of Indemnity Limit**

We may at any time pay You the Limit of Indemnity applicable to an Occurrence (less any sums already paid in respect of that Occurrence), or any lesser amount for which all Claims arising out of that Occurrence can be settled. Thereafter, We may relinquish the conduct and control of any such Claims and be under no further liability in connection with them.

## **3. Reasonable Care**

You must exercise reasonable care to avoid and minimise Personal Injury or Property Damage, which shall include taking reasonable measures to maintain all premises, fittings and plant in sound condition, ensuring that only competent Employees are employed, complying with all statutory obligations, by-laws, regulations, public authority requirements and safety requirements and You must ensure that Your Employees do this as well. If You do not take all reasonable precautions, We may refuse to pay part or all of the Claim.

In the event of an Occurrence, You shall immediately take at Your own expense all reasonable steps, including recall of any of Your products, to prevent other Personal Injury or Property Damage from arising out of the same or similar conditions. Such expense shall not be recoverable under the Policy.

## **Part 2: Professional Indemnity**

### **Insuring Clauses for Part 2**

#### **The Cover**

This [Part 2](#) is Claims Made. It only covers Claims made against You and notified to Us during the Period of Insurance. However, provided You give Us notice in writing of any facts that might give rise to a Claim against You, as soon as reasonably practicable after You become aware of those facts and before the expiry date of this insurance, then this insurance will respond, notwithstanding the fact that no Claim has actually been made against You prior to the expiry date.

In consideration of the payment of the premium and subject to the terms and conditions of the Policy:

#### **2.1**

We will indemnify You against any Claim or Claims (including all legal costs and expenses for which You shall become legally liable to the Claimant) in connection with the Business and within the Territorial Scope, up to but not exceeding in the aggregate for all Claims under [Part 2](#), the Limit of Indemnity arising from breach of professional duty whether such duty is owed in contract or otherwise in respect of Your legal liability arising from negligent acts, errors or omissions whenever or wherever committed or alleged to have been committed in connection with the Sport noted in the Policy Schedule, provided that the Claim or Claims are:

- (a) Made against You during the Period of Insurance specified in the Policy Schedule; and
- (b) Immediately notified in writing to Us by You during the Period of Insurance; and
- (c) Arising out of any act, error or omission which occurred subsequent to the Retroactive Date.

#### **2.2**

We will indemnify You for all costs, fees and expenses incurred by You, with Our prior written consent, in the defence or settlement of a Claim or Claims made against You.

### **Limit of Indemnity for Part 2**

Our liability in respect of any one Claim (including legal expenses) or in the aggregate for all Claims under [Part 2](#) during the Period of Insurance shall not exceed the Limit of Indemnity specified in the Policy Schedule.

## Additional Extension

We will indemnify You against any Claims arising in respect of libel, slander and defamation up to but not exceeding the Limit of Indemnity.

## Additional Exclusions for Part 2

In addition to the General Exclusions the following exclusions are applicable to [Part 2](#) of the Policy. This Policy does not indemnify You against any Claim or Claims:

- 1.** Made or threatened or in any way intimidated prior to the inception date of the Policy;
- 2.** Arising from Known Circumstances;
- 3.** Brought about or contributed to by Your dishonest, fraudulent, criminal or malicious act or omission or of any person at any time employed by You;
- 4.** Arising from the conduct of any Business not conducted for Your benefit on Your behalf.
- 5.** As a result of Your insolvency, bankruptcy or provisional liquidation or liquidation.
- 6.** Arising from the sale or supply of goods by You or on Your behalf;
- 7.** Arising out of or in respect to any liability assumed by You under any express warranty, guarantee or agreement unless such liability would have attached to You notwithstanding such express warranty, guarantee or agreement.
- 8.** Arising out of losses caused directly or indirectly out of the publication of a libel or utterance of a slander or other defamatory material:
  - (a) Made prior to the Period of Insurance noted in the Policy Schedule;
  - (b) Made by You or at Your request with knowledge as to its falsity;
  - (c) Related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf including material published via the internet.
- 9.** Arising from loss or deprivation of or damage to documents.
- 10.** For or arising out of or in respect of any breach of the Trade Practices Act 1974 (Cth) and/or the Competition and Consumer Act 2010 (Cth) and/or in respect of any breach of a Fair Trading Act or its equivalent of a State or Territory and as amended from time to time.
- 11.** Brought against You arising directly or indirectly from the use of non-medically prescribed drugs.
- 12.** Where You have, without Our prior written consent, waived or surrendered any right, contribution or indemnity for which You might otherwise have been entitled.
- 13.** This [Part 2](#) does not indemnify You against any liability to pay any trading debts.
- 14.** This [Part 2](#) does not indemnify You against any liability of Yours arising solely from Your duties as a director or officer of any company.

## Additional Conditions for Part 2

### **1. Loss or Suspension of registration**

You shall give immediate notice in writing to Us should Your statutory registration be cancelled, suspended or terminated.

## Part 3: Management Liability

### Insuring Clauses for Part 3

For the purpose of this [Part 3](#) only, the following definitions apply:

**Insured Officer** means any of Your directors, executive officers, committee members, office-holders or Office Bearers of the Club, Association or entities specified in the Policy Schedule but only whilst acting within the scope of their duties in such capacity and only if they have acted lawfully in such capacity and in accordance with the lawful direction/directions of the Club, Association or entities specified in the Policy Schedule.

**Club** means the Club, Association or entities specified in the Policy Schedule.

#### The Cover

This [Part 3](#) is Claims Made. It only covers Claims made against an Insured Officer and/or the Club as specified in this [Part 3](#) and notified to Us during the Period of Insurance. However, provided You give Us notice in writing of any facts that might give rise to a Claim against an Insured Officer and/or the Club as soon as reasonably practicable after You become aware of those facts and before the expiry date of this insurance, then this insurance will respond, notwithstanding the fact that no Claim has actually been made against an Insured Officer and/or the Club prior to the expiry date.

In consideration of the payment of the premium and subject to the terms and conditions of the Policy:

#### 3.1

We will pay on behalf of an Insured Officer all Loss on account of any Claim first made against an Insured Officer and/or the Club and reported to Us by You during the Period of Insurance in respect of any:

- (a) Wrongful Act; or
- (b) Employment Practice Breach; or
- (c) Trustee Breach

for which the Club is permitted or required to indemnify an Insured Officer.

**3.2** We will reimburse the Club for all Loss on account of any Claim first made against an Insured Officer and/or the Club and reported to Us by You during the Period of Insurance in respect of any:

- (a) Wrongful Act; or
- (b) Employment Practice Breach; or
- (c) Trustee Breach.

**3.3** We will pay on behalf of the Club and/or an Insured Officer all Loss on account of any Claim first made against the Club and/or an Insured Officer and reported to Us during the Period of Insurance in respect of any:

- (a) Wrongful Act; or
- (b) Employment Practice Breach; or
- (c) Trustee Breach.

**3.4** We will reimburse the Club up to the amount nominated in the Policy Schedule for any Loss of Money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Club or for which the Club is legally liable due to any dishonest or fraudulent act or omission of an Employee which is first Discovered by the Club during the Period of Insurance and notified to Us during the Period of Insurance.

**3.5** Where the Club, have received a Tax Audit Notice, and have reported it to Us during the Period of Insurance, We will provide cover to the Club for necessary and reasonable Tax Audit Costs incurred by the Club up to the completion of the audit or investigation.

**3.6** We will cover Loss sustained by the Club which is first Discovered during the Period of Insurance and caused by Dishonest Acts but not Dishonest Acts of an Insured Officer.

**3.7** We will pay the Defence Costs either incurred by Us or by the Club or by an Insured Officer with Our prior written consent only. The Defence Costs must be reasonably incurred. We also agree to advance Defence Costs before final disposition of a Claim:

- (a) where We give the Club or an Insured Officer written confirmation that We will pay the
- (b) **Club's or the Insured Officer's Loss arising from the Claim;** or
- (c) where We take over and conduct proceedings in respect of the Claim.

For the purpose of Insuring Clauses 3.1, 3.2 and 3.3 above, this Clause is subject to [General Condition 3](#) (Claims Defence & Settlement). Under this [Part 3](#), We may pay Defence Costs before final disposition of a Claim at Our discretion.

If We subsequently refuse to pay Loss under this [Part 3](#), the Club and/or an Insured Officer must reimburse Us for any Defence Costs that We have paid in advance either on behalf of the Club and/or on behalf of an Insured Officer.

This [Part 3](#) shall only provide cover with respect to any Claim made against an Insured Officer and notified to Us after the Retroactive Date.

## Limit of Indemnity for Part 3

Our liability in respect of any one Claim (including legal expenses) or in the aggregate for all Claims under this Section Part 3 during the Period of Insurance shall not exceed the Limit of Indemnity specified in the Policy Schedule.

## Automatic Extensions for Part 3

In respect of all Insuring Clauses other than 3.5 and 3.6 under this Part 3, We agree to provide cover for any Claim against:

### 1. Automatic Reinstatement of the Indemnity Limit

Claim(s) which require reinstatement of the Indemnity Limit during the Period of Insurance, because the Indemnity Limit is eroded (partially or totally) as a result of the payment of an earlier and separate Claim, Claims or Defence Costs, We agree to reinstate the Limit of Indemnity. However, the aggregate of all such reinstatements in connection with all Claims will not exceed twice the Indemnity Limit, inclusive of Defence Costs, and such reinstatements are only available where the subsequent Claim(s) is/are based on facts and matters totally different from and unrelated to those which gave rise to the erosion or exhaustion of the Indemnity Limit. Further, this Extension does not apply until the Club have exhausted the limits of any Policy which is in excess of the original Indemnity Limit under this Policy, other than any similar reinstatement provisions under such excess policies.

### 2. Committees

Any member of any Committee established by the Club and/or an Insured Officer, for the Club, in respect of the conduct of the business or activities of such Committee.

### 3. Continuous Cover

We agree to provide cover for any Claim where an Insured Officer:

- (a) First became aware, prior to the Period of Insurance, that a Claim might or could arise from facts or circumstances known to it; and
- (b) Had not notified Us of such facts or circumstances prior to the Period of Insurance.

General Exclusion 11 will not apply to any notification to Us during the Period of Insurance of any such Claim, provided that:

- i. We were the Management Liability or Directors and Officers Liability insurer of the Club when an Insured Officer first became aware of such facts and circumstances; and
- ii. We have continued, without interruption, to be the Management Liability or Directors and Officers Liability insurer of the Club up until this Policy came into effect; and



- iii. There has not been any fraudulent non-disclosure or fraudulent misrepresentation by the Club and/or an Insured Officer in respect of such facts or circumstances; and

We have the discretion to apply the terms and conditions of the Policy applicable, when the Club and/or an Insured Officer first became aware of the facts and circumstances, including but not limited to the Indemnity Limit and Deductible, or the terms and conditions of this Policy.

#### **4. Defamation**

We agree to provide cover for defamation where:

- (a) The act, error or omission on the part of an Insured Officer is unintentional; and
- (b) Is reported during the Period of Insurance; and
- (c) Relates to advertising, broadcasting or telecasting activities conducted by an Insured Officer for and on behalf of and at the direction of the Club including material published via the Internet by an Insured Officer for and on behalf of and at the direction of the Club only.

#### **5. Discovery Period**

If We refuse to offer any renewal terms for this Policy at the end of the Period of Insurance for any reason other than non-payment of premium, then the Club and/or an Insured Officer shall be entitled to purchase a Discovery Period of 12 months upon payment of 100% of the annual premium.

If a Transaction takes place, the Club and/or an Insured Officer do not have any right to purchase the Discovery Period specified above, however, the Club and/or an Insured Officer do have the right, within 30 days of the end of the Period of Insurance, to request an offer from Us for a Discovery Period of up to 12 months. We may, but are not obliged to, offer a Discovery Period on such terms and conditions as We may decide at Our discretion.

The provision of a Discovery Period is conditional upon:

- (a) The Club and/or an Insured Officer requesting its purchase in writing within 30 days following the end of the Period of Insurance; and
- (b) Payment of the additional premium within 30 days of the expiry of the Period of
- (c) Insurance; and
- (d) This Policy not being replaced by any other Policy or Policies affording Directors and
- (e) Officers Liability or Management Liability.

If a Discovery Period is effected, the Indemnity Limit shall not be increased in any way.

A Discovery Period may not be cancelled and the additional premium for a Discovery Period is not refundable.

#### **6. Former Subsidiary Cover**

We agree to provide cover in respect of any Club that ceases to be a Subsidiary during the Period of Insurance or prior to commencement of the Period of Insurance, provided that the cover provided shall only apply in respect of a Wrongful Act, Employment Practice Breach or Trustee Breach that occur whilst the entity was a Subsidiary of the Club. There is no cover under Insuring Clauses 3.5 or 3.6.

## **7. Heirs, Estates and Legal Representatives**

We agree to provide cover in respect of:

- (a) An Insured Officer's legal or de-facto spouse, domestic partner or companion; or
- (b) The estate, heirs, legal representatives or assigns of any deceased or mentally incompetent Insured Officer;

in respect of Loss resulting from any Wrongful Act, Employment Practice Breach or Trustee Breach committed by an Insured Officer.

## **8. New Subsidiary Cover**

We agree to provide cover in respect of any Subsidiary which is created or acquired by the Club during the Period of Insurance.

The cover provided shall only apply in respect of a Wrongful Act, Employment Practice Breach or Trustee Breach of an Insured Officer occurring after the date of creation or acquisition.

## **9. Occupational Health and Safety**

We agree to provide cover for Defence Costs, notwithstanding the Bodily Injury/ Property Damage [Additional Exclusion 1](#) under this [Part 3](#) in respect of any Claim made against the Club and/or an Insured Officer where such Claim arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

## **10. Official Investigations and Inquiries**

- (a) We agree to provide cover for any Defence Costs incurred with Our prior written consent for any legally compellable attendance by an Insured Officer for examination at any official investigation, examination, coronial or statutory inquiry including any legal process taken under the workplace Occupational Health and Safety Act or similar legislation of any state or territory in relation to the affairs of the Club or any other examination of an Insured Officer by virtue of his/her position with the Club provided that notice of the official investigation, examination or inquiry is first received by the Club and/or an Insured Officer and notified to Us during the Period of Insurance.
- (b) We agree to provide cover for any Defence Costs incurred with Our prior written consent for any legally compellable attendance by an Insured Officer at any official investigation, examination, coronial or statutory inquiry in relation to an allegation that an Insured Officer has breached Occupational Health and Safety laws or regulations or employment laws or regulations, provided that notice of the official investigation, examination or inquiry is first received by the Club and/or an Insured Officer and notified to Us during the Period of Insurance.

The total amount payable by Us shall not exceed the Sub-Limit specified in the Policy Schedule for this Insuring Clause. This Sub-Limit forms part of, and is not payable in addition to the Indemnity Limit.

For the purpose of this Clause and the terms, conditions and exclusions of the Policy, Claim also means an official investigation, examination or inquiry.

## 11. Outside Directorship Cover

We agree to provide cover for all Loss on account of any Claim made against an Insured Officer who was, is or may become, at the written request of the Club, a director, Officer, Trustee, governor or equivalent position, in any Outside Entity for any Wrongful Act, Employment Practice Breach or **Trustee Breach in such Office Bearer's capacity as a director, officer, Trustee, governor or equivalent position**, in the Outside Entity.

This cover shall be specifically in excess of any insurance in force in respect of the Outside Entity as well as any indemnification provided by the Outside Entity to an Insured Officer. The cover provided by this extension shall not apply in connection with any Claim made against any Insured Officer by the Outside Entity, any of its directors, Officers, Trustees, governors or equivalent or any shareholder of the Outside Entity holding more than 20% of the issued and outstanding voting share capital of the Outside Entity.

We are not liable to make any payment for Loss arising out of, based upon, attributable to or in any way connected with the actual or alleged insolvency of any Outside Entity or any actual or alleged inability of any Outside Entity to pay its debts as and when they fall due.

## 12. Order of Payment

If the payment of Loss in respect of a Claim or Claims is due under this Policy but the amount of such Loss in the aggregate exceeds the remaining available Indemnity Limit, We shall:

- (a) First pay such Loss for which coverage is provided under Insuring Clause 3.1; then
- (b) To the extent of any remaining amount of the Indemnity Limit available after payment under (a) above, pay such Loss for which coverage is provided under any other provision of this Part 3.

## 13. Public Relations Cover

It is agreed that the definition of Loss under this Policy shall include costs incurred by You:

- (a) In connection with a Claim for extradition of an Insured Officer; or
- (b) **To mitigate any adverse effect on an Insured Officer's reputation by disseminating findings** which exonerate the Insured Officer from fault, liability or culpability in connection with a Claim that is covered under this Policy, provided such findings are made by a court with jurisdiction to finally dispose of such Claim (including the outcome of any appeal in relation to such Claim).

The total amount payable under this Extension is \$100,000 in the aggregate in respect of all Office Bearers for all Claims.

For the purpose of this [Automatic Extension 13](#), Limits means any reasonable fees, costs and expenses of a public relations consultant retained with Our prior written consent (which shall not be unreasonably delayed or withheld).

## 14. Retirement Cover

If the Club does not renew this Policy or replace it with any other insurance providing Management Liability or Directors and Officers Liability coverage and one of the Discovery Period Options (detailed in [Automatic Extension 5](#) above) has not been purchased, then any Insured Officer will be automatically entitled to a 12 month Discovery Period at no additional premium after the expiry of the Period of Insurance provided that an Insured Officer retired from all employment or office with the Club prior to the expiry of the Period of Insurance.

## 15. Statutory Liability Extension

Under Insuring Clauses [3.1](#), [3.2](#) and [3.3](#), and notwithstanding the reference in General Exclusion [5 \(c\)](#) to fines and penalties, We agree that the definition of Loss includes Statutory Liability.

With respect to the cover under this Extension, We agree that for any Claim brought in the jurisdiction and under the laws of Australia or New Zealand against the Club and/or an Insured Officer in connection with:

- (a) A breach of occupational health and safety law or regulation ("OH&S"), the Bodily Injury/Property Damage [Additional Exclusion 1](#) under this [Part 3](#) does not apply, including in respect of Defence Costs;
- (b) The discharge, dispersal, release or escape of Pollutants, [General Exclusion 10](#) of the Policy does not apply, including in respect of Defence Costs.

However, We are not liable to make payment under the Policy in connection with any Statutory Liability directly or indirectly based on, arising out of or attributable to any reckless or grossly negligent conduct by the Club and/or an Insured Officer or any known or intentional breach or violation of law by the Club and/or an Insured Officer. This exclusion shall only apply if it is established through a judgment or other final adjudication adverse to the Club and/or an Insured Officer or any admission by the Club and/or an Insured Officer that such conduct did in fact occur.

We are not liable to make any payment under the Policy in connection with any alleged violation of any law in relation to vehicle, air or marine traffic.

The sub-limit for all cover under this Statutory Liability Extension is \$250,000 in the aggregate for all Claims inclusive of all Defence Costs.

## Additional Exclusions for Part 3

In addition to the General Exclusions the following exclusions are applicable to [Part 3](#) of the Policy. This Policy does not indemnify the Club and/or an Insured Officer against any Claim or Claims:

### 1. Bodily Injury / Property Damage

Any Claim made against the Club and/or an Insured Officer for or in connection with bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including Loss of use thereof. However, this exclusion shall not apply to any Claim in respect of mental anguish or emotional distress or disturbance alleging an Employment Practice Breach.

## 2. Breach of Professional Duty

Any Claim based upon, attributable to or in consequence of any breach of professional duty. For the sake of clarity, this exclusion does not apply to Wrongful Acts by an Insured Officer while acting in the course of his or her duties.

## 3. Direct Financial Loss

We will not cover the Club and/or an Insured Officer for or in connection with:

- (a) Direct Financial Loss arising out of or in any way connected with any Dishonest Acts committed, in whole or in part, outside of Australia or New Zealand.
- (b) Direct Financial Loss:
  - i. First Discovered prior to the commencement of the Period of Insurance; or
  - ii. First Discovered after the end of the Period of Insurance, or the Discovery Period if applicable; or
  - iii. In any way connected with any Employee from the time any director or officer (who is not in collusion with such Employee) had actual knowledge that the Employee had committed or was suspected of having committed any fraudulent or Dishonest Act, even if it does not constitute a Dishonest Act as defined.
- (c) Direct Financial Loss arising out of or in any way connected with any fraudulent or Dishonest Activities, or involving collusion by or complicity, of:
  - i. An Office Bearer; or
  - ii. Any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the Club or any of the Subsidiaries of the Club or any **of the Club's Associated Entity's voting share** capital.
- (d) Any indirect or consequential loss of any nature, including but not limited to:
  - i. Any loss of income (such as interest and dividends) not realised by the Club and/or an Insured Officer or any other person or organisation;
  - ii. Any costs incurred by the Club and/or an Insured Officer in re-writing or amending the software programs or systems of the Club where such re-writing or amending is necessary to correct the programs or systems;
  - iii. Any contractual penalties incurred by the Club and/or an Insured Officer;
  - iv. Any liability to a third party;
  - v. Any costs, fees or other expenses incurred by the Club and/or an Insured Officer in establishing a right under this Policy.

- vi. Any costs, fees or other expenses incurred by the Club and/or an Insured Officer in prosecuting or defending any demand, Claim or legal proceeding resulting from a Direct Financial Loss which is covered under this Policy.
- (e) Direct Financial Loss the proof of which is dependent solely upon:
- i. A profit and Loss computation; or
  - ii. A comparison of inventory records with an actual physical count.

If, however, an Employee is identified as having caused a Direct Financial Loss, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the Direct Financial Loss as required by [Additional Condition 3](#) under [Part 3](#).

- (f) Direct Financial Loss arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.
- (g) Direct Financial Loss arising out of or in any way connected with:
- i. The voluntary giving or surrendering of Money, Securities or other tangible property in any exchange or purchase, unless such Direct Financial Loss is directly caused by Dishonest Acts committed.
  - ii. The complete or partial non-payment or default under any Credit Arrangement including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason.
  - iii. Any trading, whether or not in the name of the Club and/or an Insured Officer and whether or not in a genuine or fictitious account.
  - iv. The issuing of cheques exceeding \$5,000 that are not countersigned; (v) Any bank transfers that are not properly authorised; or
  - v. Employees responsible for cheque orders that also have cheque signing authority.

#### **4. Employment Practices**

- (a) Breaches of intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret;
- (b) Any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, business competition, price fixing, unfair or restrictive trade practices, or tortious **interference in any other party's business or contractual** relationships;
- (c) Any actual or alleged contractual liability of the Club and/or an Insured Officer under any express or implied contract or agreement. However, this exclusion shall not apply to a Claim for an Employment Practice Breach to the extent the Club and/or an Insured Officer would have had such liability in the absence of such contract or agreement;

- (d) Fines or penalties or non-monetary relief;
- (e) Any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any Industrial Instrument; or

**Any obligation pursuant to any law, regulation, or Industrial Instrument in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or Industrial Instrument whatsoever.**

## **5. Investment Performance**

Any Claim or liability directly or indirectly arising from, attributable to or in consequence of:

- (a) Any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any Insured Officer or commodity or currency or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings;
- (b) Any Claim arising from any financial or investment advice provided by an Insured Officer including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment;
- (c) A failure by an Insured Officer to warn of the risks of market fluctuation of any investment.

## **6. Liability as Occupier, Motor, Marine**

Any Claim or liability arising from or incurred or alleged to have been incurred:

- (a) In connection with the use, occupation, ownership or lease of any real estate or personal property, by the Club and/or an Insured Officer or on behalf of the Club and/or an Insured Officer; or
- (b) As an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

## **7. Major Shareholder**

Any Claim brought by any shareholder owning, directly or indirectly, more than or equal to 15% of the voting share capital of the Club or any of its Subsidiaries or any Associated Entity and/or by any shareholder that has or had any Board representation on the Club or any of their Subsidiaries or any associated Club.

## **8. Prospectus Liability**

Any Claim made against You arising out of or in any way connected with:

- (a) Any Disclosure Document which contains an offer for the issue, sale, purchase or transfer of Securities;

- (b) The making of any written or verbal representations in connection with a Disclosure Document or the offer referred to in (a);

for the purpose of raising or restructuring capital for the Club and/or an Insured Officer or any Outside Entity.

## **9. Superannuation Liabilities**

Any Claim:

- (a) Arising out of or in any way connected with Your failure and/or the failure of an Insured Officer to pay into, or collect contributions for, a superannuation fund as required by law and/or a Fund trust deed;
- (b) For or in respect of Benefits of whatsoever nature and howsoever may be described allegedly due or owing by You and/or an Insured Officer to any party(s).

## **10. Tax Audit Costs**

We will not cover You and/or an Insured Officer for or in respect of any Tax Audit Costs in connection with:

- (a) Any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the provision of information by You and/or an Insured Officer.
- (b) Inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit.
- (c) Any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories or protectorates, or where the services giving rise to the audit are performed by persons or any corporate entity outside of Australia and its external territories or protectorates.
- (d) Matters arising under customs legislation.
- (e) Any audit or investigation, where notice or information as to their likely conduct was received by You and/or an Insured Officer prior to the Period of Insurance. Receipt of such communication will have occurred when the Australian Taxation Office makes communication with You and/or an Insured Officer or any other person acting on its behalf.
- (f) Any fraudulent act, error, omission or misrepresentation committed by You or on Your behalf and/or by or on behalf of an Insured Officer.
- (g) The imposition of, or seeking to impose, any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution.
- (h) An audit or investigation of a return of income that has not been prepared or reviewed by the Accountant or Registered Tax Agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return.



- (i) Tax Audit Costs incurred after the audit or investigation has been completed.
- (j) Any request for any form of tax audit by You and/or by an Insured Officer.

## **11. Trading Debt**

Any Claim arising from or directly or indirectly attributable to any of Your and/or the Insured Officer's trading debts or business liabilities or any guarantee given by You and/or by an Insured Officer for a debt.

## **Additional Conditions for Part 3**

### **1. Allocation**

- (a) Where a Claim involves matters and/or parties which give rise to Loss covered by this Policy and matters and/or parties which do not, then We will use Our best efforts to agree upon a fair and proper allocation of the proportion covered under this Policy, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Only Loss incurred by the Insured (if applicable), and in the case of Defence Costs those which are directly attributable to (where **applicable**) **the Insured's defence of such Claim, is covered**, subject always to the terms and conditions of this Policy.
- (b) If an allocation cannot be agreed then it shall be referred to mediation by a Senior Counsel, mutually agreed upon by each party or, in default of agreement, the Senior Counsel to be nominated by the relevant Law Institute. The parties will have the opportunity to put to the Senior Counsel written and oral submissions based on the relative legal and financial exposures attributable to covered and uncovered matters. The outcome of such mediation shall be binding on the parties to the mediation. Pending the outcome of the mediation, We may, at Our sole discretion, meet the Loss on an interim basis. Subject to the outcome of the mediation, if that outcome is favourable to Us, the Insured will refund to Us any amount which We have paid that exceeds the amount We and the Insured agreed at mediation that is payable (if any) under this Policy. The costs of any mediation under this clause shall be borne equally by Us and the Insured.
- (c) If the Deductible applicable to Insuring Clause 3.1 under this Part 3 applies to part of a Loss and the Deductible applicable to any other Insuring Clause applies to Part 3, then We and the Insured must use our best efforts to reach an agreement of a fair allocation of such Loss between Insuring Clause 3.1 and other Insuring Clauses under this Part 3. If no agreement can be reached, the dispute will be referred to Senior Counsel using the mechanism in (b) above for resolution of the issue.

## 2. Alteration to Risk

If during the Period of Insurance a Transaction takes place, then the cover provided under [Part 3](#) applies only to Wrongful Acts, Employment Practice Breaches, Trustee Breaches and Dishonest Acts committed prior to the effective date of the Transaction.

The Insured shall give Us written notice of the Transaction as soon as practicable but not later than 30 days after the effective date of the Transaction.

If, during the Period of Insurance, the Insured decides to make an offering of its Securities in any jurisdiction, whether its Securities are already traded or not, by any means, public or private, then as soon as the information is publicly available, the Insured shall provide Us with any prospectus or **offering statement for Our evaluation and assessment of the Insured's increased exposure**, and We shall be entitled to amend the terms and conditions of this Policy and/or charge a reasonable additional premium reflecting the increase in exposure.

**At the Insured's request, prior to the public announcement of such Securities offering, We shall** evaluate and assess the increased exposure and advise of all necessary amendments to the terms and conditions of this Policy and additional premium. In this event and at the request of the Insured, We will enter into a confidentiality agreement with the Insured relating to any information provided regarding the proposed Securities offering.

## 3. Basis of Valuation

With respect to any Direct Financial Loss which is covered under this Policy, We are not liable for more than:

- (a) The actual market value of Securities, Money or precious metals at the close of business on the day the Direct Financial Loss was first Discovered (determined by the value published in the Australian Financial Review), or the actual cost of replacing the Securities, Money or precious metals, whichever is less.
- (b) The actual cash value of other tangible property (not referred to in (a) above) at the close of business on the day the Direct Financial Loss was first Discovered, or the actual cost of replacing the property with property of like quality or value, whichever is less.
- (c) The cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the Insured in order to reproduce books of account and other records.
- (d) The cost of labour for the actual transcription or copying of electronic data furnished by the Insured in order to reproduce such electronic data.

#### **4. Confidentiality**

The Insured must not disclose, either personally or through any person or entity acting on the **Insured's behalf or at the Insured's direction, to any third party:**

- (a) The existence of this Policy; or
- (b) The nature of the indemnity provided; or
- (c) The Indemnity Limit; or
- (d) The amount of premium paid.

However, the Insured may disclose the above matters to the extent that:

- i. The Insured is required to do so by law; or
- ii. We consent to the disclosure in writing.

#### **5. Non-Imputation**

Except as provided for under Insuring Clause 3.4, which includes reference to the definition of Discovered under this Part 3, no state of mind or knowledge possessed by any one Office Bearer will be imputed to any other Office Bearer for the purpose of determining whether any provision in this Policy applies. However, any state of mind or knowledge possessed by any past or present chairman of the board or management committee, chief executive officer, director, chief operating officer or chief financial officer of the Insured will be imputed to the Insured.

#### **6. Notification of Direct Financial Loss**

The Insured shall, as a condition precedent to Our obligations under this Policy, give written notice to Us of any Direct Financial Loss as soon as practicable within the Period of Insurance, or within the Discovery Period if applicable, but in any event not later than 60 days after any Direct Financial Loss is first Discovered.

The Insured must, at its own cost, also:

- (a) Provide Us with affirmative proof of the Direct Financial Loss with full particulars within 6 months of the Direct Financial Loss being first Discovered; and
- (b) Provide Us with all requested information and documents and co-operate with Us in all matters pertaining to the Direct Financial Loss.

#### **7. Settlement of Direct Financial Loss**

If the Insured notifies Us of a Direct Financial Loss and We accept the notification under this Policy, subject to the Insured's compliance with [Additional Condition 2](#) under this Part 3, an appropriate fraud investigator will be nominated by the Insured, and approved in writing by Us, to establish proof of any element or part of the Direct Financial Loss not yet accepted by Us. The fraud investigator shall:

- (a) Investigate the facts behind such unproven Direct Financial Loss; and
- (b) Determine the quantum of such unproven Direct Financial Loss; and
- (c) Advise when and how the Insured's controls were or may have been breached; and
- (d) Provide recommendations which may prevent future similar Direct Financial Loss; and
- (e) Issue their findings in a report format approved by Us; and
- (f) Provide a copy of the report to the Insured and to Us.

The report of the fraud investigator will not be binding and definitive as to the facts and quantum of such unproven Direct Financial Loss.

We will pay for the reasonable and necessary fees, costs and expenses of the fraud investigator provided the unproven Direct Financial Loss is ultimately determined to be covered under this Policy. If that part of the Direct Financial Loss is determined not to be covered under this Policy, the Insured will pay the said fees, costs and expenses of the fraud investigator.

Any amount of the investigator's fees paid by Us under this Claims Condition will be paid in addition to the Indemnity Limit and will not be the subject of any Deductible.

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