

# Policy Wording

## Combined Liability Insurance (Including Management Liability)



Dated: 1 January 2024

Issued by ATC Insurance Solutions Pty Ltd ("ATC") (ABN 25 121 360 978, AFS Licence No. 305802) acting under a binder as an agent of XL Insurance Company SE, Australia Branch (ABN 36 083 570 441)

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## IMPORTANT INFORMATION

### 1. About the insurer

This Policy is underwritten by XL Insurance Company SE, Australia Branch (ABN 36 083 570 441) In consideration of the premium specified in the Schedule, We agree to insure you in accordance with the terms and conditions contained herein or endorsed hereon.

The Insurers are referred to in the Policy as "We", "Our" and "Us" or "Insurers".

This can be viewed on APRA's website at [www.apra.gov.au](http://www.apra.gov.au) which includes a register of all the firms they regulate or by calling their hotline on 1300 55 88 49.

### 2. About ATC

The Policy is issued by ATC Insurance Solutions Pty Ltd ("ATC") ABN 25 121 360 978 AFSL 305802 acting under a binder as an agent of XL Insurance Company SE, Australia Branch (ABN 36 083 570 441) ATC acts on behalf of the Insurers and not you.

ATC can be contacted as follows:

ATC Insurance Solutions Pty Ltd  
Level 4, 451 Little Bourke Street  
Melbourne VIC 3000  
Telephone (03) 9258 1777  
Facsimile (03) 9867 5540  
Website [www.atcis.com.au](http://www.atcis.com.au)

### 3. Your duty of disclosure

Before you enter into an insurance contract, you have a duty, under the Insurance Contracts Act 1984 (Cth), to tell Us anything that you know, or could reasonably be expected to know, may affect Our decision to insure you and on what terms.

You have this duty until We agree to insure you.

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

#### **You do not need to tell Us anything that:**

- diminishes or reduces the risk We insure you for; or
- is common knowledge; or
- We know or, in the ordinary course of Our business, should know as an insurer; or
- We waive your duty to tell Us about.

#### **If you do not tell Us something**

If you do not tell Us anything you are required to, We may cancel your contract or reduce the amount We will pay you if you make a claim, or both. If your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

### 4. Third Party Rights

Subject to any rights a beneficiary may have pursuant to the Insurance Contracts Act 1984 (Cth), no third party will be able to enforce any rights under this Policy.

### 5. General Insurance Code of Practice

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise standards of practice and service across the general insurance industry.

You can obtain more information on the Code of Practice, how it applies in relation to ATC and your rights under its terms, by contacting Us and/or ATC. Information on the Code can be found at <http://codeofpractice.com.au/>.

## **6. Change in circumstances**

You must tell Us as soon as reasonably practicable of any change in the information you have provided to Us which happens before or during any period of insurance.

When We are notified of a change We will tell you if this affects your Policy. For example We may cancel your Policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of your Policy or require you to pay more for your insurance. If you do not inform Us about a change it may affect any claim you make or could result in your insurance being invalid.

## **7. Fraud**

If any claim made is in any respect fraudulent or if any fraudulent means or devices be used by you or anyone acting on your behalf to obtain any benefit under this Policy, or if any loss hereunder be the wilful act occasioned by you or with your connivance, We, without prejudice to any other right(s) you might have under this Policy, may be entitled to refuse to pay such claim.

## **8. Renewal procedure**

This insurance is not automatically renewable. Before this insurance expires We will advise you, through your intermediary, of whether We intend to offer renewal, any information We require to do so and if so on what terms. This document also applies for any offer of renewal We may make, unless We tell you otherwise.

It is important that you check the terms of any renewal offer before renewing to satisfy yourself that the details are correct. In particular, check the Limit of Indemnity and Excess(es) applicable and to ensure the levels of cover are appropriate for you.

Please note that you need to comply with your duty of disclosure before each renewal (see above).

## **9. Complaints & Dispute resolution**

There are established procedures for dealing with complaints and disputes regarding your policy or claim. These services are free to all policyholders and may be of assistance, should the need arise.

If you have any concerns or wish to make a complaint in relation to this Policy, Our services or your insurance claim, please contact Us using the details below, and We will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure.

ATC's Internal Dispute Resolution Officer  
ATC Insurance Solutions  
[info@atcis.com.au](mailto:info@atcis.com.au)  
(03) 9258 1777  
Level 4, 451 Little Bourke Street Melbourne VIC 3000

We will acknowledge receipt of your complaint and do Our utmost to resolve the complaint to your satisfaction within 10 business days. Where We are unable to do so, Our final decision will be provided to you within 30 calendar days of the date on which you first made the complaint.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA) at any time, and if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint. AFCA's contact details are as follows:

Australian Financial Complaints Authority  
GPO Box 3, Melbourne VIC 3001  
Telephone: 1800 931 678  
Web: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)

Should you choose to refer your complaint to AFCA, you must do so within 2 years of Our final decision.

## 10. Privacy

In this Privacy statement "we", "us" and "our" means ATC acting under a binder as the Insurers agent and "you" or "your" means any individual whose personal information we collect for the purposes of the Policy.

We are bound by the requirements of the *Privacy Act 1988* (Cth), which set out standards on the collection, use, disclosure and handling of personal information.

Personal information is essentially any information or an opinion about an identified individual, or an individual who is reasonably identifiable. See the Privacy Act for full details of what constitutes personal information.

Our Privacy Policy is available at [www.atcis.com.au](http://www.atcis.com.au) or you can contact us as follows:-

ATC Insurance Solutions Pty Ltd  
Level 4, 451 Little Bourke Street  
Melbourne VIC 3000  
Telephone: 03 9258 1777

For information about how the Insurer processes your personal information, please see its full privacy notice at: <https://axaxl.com/privacy-and-cookies>.

If you have questions or concerns regarding the way in which your personal information has been used, please contact: [privacyaustralia@axaxl.com](mailto:privacyaustralia@axaxl.com).

We, and our agents, need to collect, use and disclose your personal information in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim and to make special offers of other services and products provided by us or those we have an association with, that might be of interest to you. You can choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

We may disclose your personal information to third parties (and/or collect additional personal information about you from them) who assist us in providing the above services and some of these are likely to be overseas recipients, including in the United Kingdom. Who they are may change from time to time. You can contact us for details. In some cases we may not be able to take reasonable steps to ensure they do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire our services and products you agree that you cannot seek redress under the Act or against us (to the extent permitted by law) and may not be able to seek redress overseas.

These third parties, which include our related entities, distributors, agents, insurers, claims investigators, assessors, lawyers, medical practitioners and health workers, Lloyd's Regulatory Division and anyone either of us appoint to review and handle complaints or disputes, any other parties where permitted or required by law and federal or state regulatory authorities, including Medicare Australia and Centrelink, will only use the personal information for the purposes we provided it to them for (unless otherwise required by law).

Information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (eg from your representatives or co-insureds or through websites from data you input directly or through cookies and other web analytic tools). If you provide information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us; and
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it.

If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

By providing us with personal information, you and any person you provide personal information for, consent to these uses and these disclosures unless you tell us otherwise. If you wish to withdraw your consent, including for things such as receiving information on products and offers by us or persons we have an association with please contact ATC.

## **11. Electronic communication**

Pursuant to the *Insurance Contracts Act 1984* (Cth), a notice or other document may be given by electronic communication in accordance with the *Electronic Transactions Act 1999* (Cth) and any regulations made under that Act. Amongst other things, this means that We can communicate with you by email.

If you are represented by an agent (e.g. your insurance broker) and they provide Us with their nominated email address, they and you consent to Us delivering documents electronically to that email address, unless you or they tell Us otherwise. Any documents sent by email will be considered to have been received by you and your Agent twenty four hours from the time We send them to that email address.

In all other cases, if you provide Us with your nominated email address you consent to Us delivering documents electronically to that email address, unless you tell Us otherwise. Any documents sent by email will be considered to have been received by you twenty four hours from the time We send them to t email address.

It is you and your agent's obligation to ensure that any email address provided to Us is up to date and let Us know promptly if it changes.

## **12. Preventing the Insurers rights to recovery**

The Insurer's liability to indemnify you for loss, damage or liability under this Policy may be excluded or limited if you enter into a contract, arrangement or understanding that excludes or limits the Insurer's rights or ability to recover compensation in respect of that loss, damage or liability from any other person or entity.

## **13. Financial Claims Scheme**

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by APRA. The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. You may obtain further information about the FCS from [www.fcs.gov.au](http://www.fcs.gov.au) and the APRA hotline on 1300 55 88 49.

## **14. Claims Management**

To make a claim for benefits under this Policy, you can send a completed claim form to Us as follows:

ATC Insurance Solutions Pty Ltd

Level 4, 451 Little Bourke Street  
Melbourne VIC 3000

Please contact the ATC Insurance claims team to obtain a claim form or if you have any questions or require assistance on 1800 994 694.

**15. Claims made and notified basis**

Part 1 and Part 3 of this insurance operates on a "claims made and notified basis". This part provides cover for Claims made against the Insured and notified to Us during the Period of Insurance.

**16. Statutory right to notify facts and circumstances**

If the Insured gave the insurer notice in writing of facts that might give rise to a Claim against the Insured as soon as reasonably practicable after becoming aware of those facts, but before the Period of Insurance expired, the Insured may have rights under section 40(3) of the *Insurance Contracts Act 1984* to be indemnified in respect of any Claim subsequently made against the Insured arising from those facts even though the Claim is made after the Period of Insurance expired. Any such rights arise under legislation only.

**17. Sanction Limitation and Exclusion Clause**

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



## Part 1- Professional Indemnity

We will indemnify the Insured according to the terms of this Policy in consideration of the payment of the premium and in reliance on the contents of the proposal and any other information submitted by the Insured or on its behalf.

### 1.1 INSURING CLAUSES

- 1.1.1 We will indemnify the Insured for any Claim first made against the Insured and notified to Us during the Period of Insurance in respect of any civil liability arising from breach of professional duty in the conduct of the Business Activities.
- 1.1.2 We will also pay the Defence Costs incurred with Our prior written consent (consent will not be unreasonably withheld) in the defence, settlement or investigation of any Claim covered under clause 1.1.1.
- 1.1.3 The Policy will only indemnify the Insured for actual or alleged breaches of professional duty with respect to acts, errors or omissions committed after the retroactive date shown in the Schedule.

### 1.2 LIMIT OF INDEMNITY AND EXCESS

- 1.2.1 Our total liability under this Policy in respect of any one Claim, and in the aggregate for all Claims, will not exceed the Limit of Indemnity plus any reinstatement under automatic extension 1.4.1 except that We will pay Defence Costs in addition.
- 1.2.2 If the amount to dispose of any Claim exceeds the Limit of Indemnity, Our liability for Defence Costs shall be in the same proportion as the Limit of Indemnity bears to the amount required to dispose of the Claim.
- 1.2.3 The Insured must pay the Excess specified by the Policy for each Claim. We are only required to indemnify the Insured for amounts over and above the Excess.
- 1.2.4 The Excess does not apply to Defence Costs.
- 1.2.5 For the purposes of applying the Limit of Indemnity and to determine the number of Excesses applicable, all Claims will be treated as one Claim if they arise from causally connected or interrelated acts, errors or omissions.

### 1.3 DEFINITIONS APPLICABLE TO PART 1

- 1.3.1 **Business Activities** means the activities specified in the Schedule conducted by the Insured, as well as all associated official activities conducted by the Insured, including social and fundraising activities.
- 1.3.2 **Claim** means any:
  - (a) demand for compensation or damages made by a third party in writing to the Insured, or
  - (b) writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served on the Insured.
- 1.3.3 **Contractor** means an individual, partnership or company which provides goods or services to the Insured under terms specified in a contract or agreement.



- 1.3.4 **Defence Costs** means the fees and expenses incurred by the Insured with Our prior written consent (consent will not be unreasonably withheld) in defending, settling or investigating a Claim covered by the Policy.
- 1.3.5 **Documents** means deeds, wills, agreements, maps, plans, drawings, books, letters, contracts, certificates, forms and other documents of any nature whether printed, written, digitally or electronically stored data, or reproduced by any other method but does not mean and excludes money, bank or currency notes, bearer bonds or coupons, stamps or any negotiable instrument.
- 1.3.6 **Employee** means any person employed by the Insured under a contract of service, traineeship or apprenticeship, including volunteers (but excluding workers on-hired from labour hire agencies).
- 1.3.7 **Employment Dispute** means any dispute arising from actual or alleged: unfair or wrongful dismissal, discrimination, denial of natural justice, workplace harassment, unfair or wrongful demotion (or failure to promote, employ or recommend for employment) of any person (including an Employee) or misleading representation or advertising with respect to employment, breach of a contract of employment, or any violation of any law concerning employment.
- 1.3.8 **Excess** means the amount stated in the Schedule.
- 1.3.9 **Insured** means the entity named as the Insured in the Schedule, including any:
- (a) Subsidiary of the Insured;
  - (b) person who is during the Period of Insurance a principal, partner, director or Employee of the Insured, but only whilst acting within the scope of their duties in such capacity; and
  - (c) prior corporate entity through which the Insured previously traded in the course of the conducting the Business Activities.
- 1.3.10 **Limit of Indemnity** means the sum insured specified in the Schedule.
- 1.3.11 **Occurrence** means an event that results in Injury and/or Damage neither expected nor intended by the Insured during the course of its Business Activities and includes the continuous or repeated exposure to substantially the same general conditions.
- With respect to Injury and/or Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.
- 1.3.12 **Period of Insurance** means the period specified in the Schedule.
- 1.3.13 **Policy** means the Professional Indemnity policy in Part 1, the General Exclusions, General Conditions and Claims Conditions, the Schedule, the written proposal made by the Insured to Us (including any attachments), and any endorsement to the Policy issued by Us at the commencement of or during the Period of Insurance.

1.3.14 **Schedule** means the schedule to this Policy containing the specific insurance details of the Policy issued by Us.

1.3.15 **Sub-Contractor** means an individual, partnership or company which provides goods or services to a Contractor under terms specified in a contract or agreement.

1.3.16 **Subsidiary** means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than 50 per cent of the issued voting shares of that entity, and any subsidiary at law.

1.3.17 **We/Our/Us** means ATC acting under a binder as an agent of XL Insurance Company SE, Australia Branch (ABN 36 083 570 441)

#### 1.4 AUTOMATIC EXTENSIONS

These extensions are included automatically and are subject to the terms of the Policy except to the extent varied by the extension. Except for extension 1.4.1 they do not increase the Limit of Indemnity.

##### 1.4.1 One automatic reinstatement

Although the Limit of Indemnity for any one Claim will not change, if the Limit of Indemnity is exhausted by reason of Claims We will reinstate the Limit of Indemnity once during the Period of Insurance for claims which are new and non-related to any paid or outstanding claim

##### 1.4.2 Continuous cover

We will cover any Claim that would otherwise be excluded by Specific Exclusion 1.5.5 that arises out of an act, error or omission occurring prior to the Period of Insurance provided that:

- (a) We were the Insured's professional indemnity insurer at the time when the Insured first became aware of the fact or circumstance from which the Claim arose, and
- (b) We continued as the Insured's professional indemnity insurer from the time the Insured first became aware of the fact or circumstance to the time when the Claim is made and notified to Us.

We reserve the right to reduce the amount payable for any Claim by the amount that fairly represents any prejudice We have suffered as a result of the late notification.

The Limit of Indemnity under this extension shall be the lesser of that available under the Policy in force at the time the Insured first became aware of the fact or circumstance and this Policy. The terms of this Policy will apply in all other respects.

This extension will not apply to a fraudulent non-disclosure of a fact or circumstance.

##### 1.4.3 Fraud and dishonesty

We will cover Claims that would otherwise be excluded by Specific Exclusion 1.5.4, but We will not cover:

- (a) any person who commits, condones or authorises any dishonest, fraudulent, malicious, criminal or reckless act, error or omission; or

- (b) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes or stamps.

#### 1.4.4 Cover for others

Provided they observe and are subject to the terms of the Policy the following are also covered:

- (a) Former principals and Employees

Any person who has ceased or ceases to be a principal, partner, director or Employee of an Insured entity before or during the Period of Insurance, but solely in respect of work carried out for and on behalf of that entity.

- (b) Personal representatives

The estate, heirs, legal representatives or assigns of any deceased, mentally incompetent or insolvent Insured.

#### 1.4.5 Former Subsidiaries

We will cover the Insured for the Insured's liability in respect of the conduct of the Business Activities by a Subsidiary that ceased or ceases to be a Subsidiary before or during the Period of Insurance.

#### 1.4.6 Affiliations and joint ventures

Provided that the joint venture is declared to and agreed by Us, We will cover the Insured for the Insured's conduct in any joint venture to which the Insured is party, but cover is limited to the Insured's proportion of liability.

#### 1.4.7 Competition and Consumer Act 2010 ("Australian Consumer law")

We will cover the Insured's liability to pay compensation as a result of unintentional breaches of any provision of any Australian Consumer Law, equivalent State and Territory consumer protection legislation, including the previous consumer protections contained in the *Trade Practices Act 1974* (Cth).

#### 1.4.8 Confidentiality and intellectual property

We will cover the Insured for liability for breach of trust, confidentiality or privacy and/or infringement of copyright, trademark, design or patent arising out of the conduct of the Business Activities.

#### 1.4.9 Defamation

We will cover the Insured for unintentionally making defamatory statements.

#### 1.4.10 New Subsidiaries, mergers and acquisitions

We will cover:

- (a) any Subsidiaries that are either created or acquired by the Insured during the Period of Insurance, and
- (b) any other entities that are merged into or acquired by the Insured during the Period of Insurance

for a period of 30 days during the Period of Insurance from the date of creation, acquisition or merger (as the case may be) provided that We will only indemnify the Insured for actual or alleged breaches of professional duty with respect to acts, errors or omissions committed after the date of creation, acquisition or merger, and not any acts, errors or omissions by those other entities, before the date of creation, acquisition or merger.

1.4.10.1 Cover under this extension will only apply to Subsidiaries and entities whose professional activity is of a similar nature as the Business Activities.

1.4.10.2 Cover beyond 30 days will only be available if application is made by the Insured and agreed to by Us in writing.

#### 1.4.11 Severability and non-imputation

1.4.11.1 If more than one party is insured under this Policy the written proposal shall be construed as if it was a separate application for cover by each Insured and any statement or representation in the proposal or surrounding the proposal, or any knowledge possessed by an Insured, shall not be imputed to any other Insured.

1.4.11.2 Further, any breach of the terms or conditions of the Policy, or any other conduct by any Insured, shall not be imputed to any other Insured.

Provided always that:

- (a) the remaining Insured are entirely innocent of and had no prior knowledge of the conduct of the other Insured (or should not reasonably have been expected to have such knowledge) and as soon as reasonably practical after becoming aware of the conduct, advise Us in writing of all known facts in relation to the conduct, and
- (b) this clause is not intended to limit the Insured's duty of disclosure under the *Insurance Contracts Act 1984*.

### 1.5 SPECIFIC EXCLUSIONS

We will not cover the Insured for:

#### 1.5.1 Assumed liability

Any Claim:

- (a) arising from any duty or obligation assumed or undertaken by the Insured that is not assumed or undertaken in the normal conduct of the Business Activities, or
- (b) alleging a liability under a contractual warranty, guarantee or undertaking unless liability would have been implied by law or would have existed in the absence of the contractual warranty, guarantee or undertaking.

#### 1.5.2 Waiver of rights

Any additional liability assumed under a contract or agreement which is greater than the Insured would have otherwise had under common law and/or any applicable proportionate liability legislation, or any waiver by the Insured of its rights against a third party which limits or prevents Us from exercising Our rights subrogation against that third party

#### 1.5.3 Fines, penalties and aggravated damages

Liability to pay: fines, penalties, aggravated, punitive or exemplary damages, criminal fines, or liquidated damages.

#### **1.5.4 Dishonest, fraudulent, malicious, or reckless acts**

Any Claim arising from any dishonest, fraudulent, criminal or malicious act or omission by the Insured, unless covered by automatic extension 1.4.3.

#### **1.5.5 Known claims and circumstances**

Any Claim:

- (a) first made or threatened against the Insured before the inception date of the Policy;
- (b) arising from any fact or circumstance that the Insured knew or ought reasonably to have known before the inception date of the Policy might give rise to a Claim;
- (c) that has been notified under any previous policy or was stated on the proposal (or any declaration or other underwriting information on which this Policy is based); or
- (d) arising from any fact or circumstance that has been notified (or ought reasonably to have been) under any previous policy or was stated on the proposal (or any declaration or other underwriting information on which this Policy is based).

#### **1.5.6 Documents**

Any Claim arising from the loss or destruction of, or any damage to, Documents.

#### **1.5.7 Employers liability**

The Insured's liability to pay compensation for the death, bodily injury, illness or disease of, or to, any Employee or damage to, destruction of, or loss of use of any property of any Employee.

#### **1.5.8 Employment Disputes**

Any Claim arising from any Employment Dispute.

#### **1.5.9 Directors and officers**

Any liability incurred as a director or officer of a company, or as a trustee of a trust while acting in those capacities.

#### **1.5.10 Related persons**

Unless originally emanating from an independent third party, any Claim made by:

- (a) any person or entity covered by this Policy, or
- (b) any spouse, domestic partner or companion, parent, parent-in-law, domestic partner of a parent, sibling, or child of any Insured or any spouse or domestic partner of an Insured's sibling or child.

#### **1.5.11 Property**

Any Claim arising from the ownership, maintenance, operation, possession, occupation or use by on behalf of the Insured of any land, building, aircraft, aerial device, watercraft (except

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watercraft while stored on land or that do not exceed eight metres in length), hovercraft, or any other mechanically propelled vehicle.

**1.5.12 Products Liability**

Any Claim arising from manufacture, installation, assembly, processing, repair, maintenance, sale, supply or distribution of goods or products by or on behalf of the Insured.

**1.5.13 Care, custody and control**

Any Claim arising directly or indirectly from property under the Insured's care, custody or control

**1.5.14 Insurance**

Any Claim that is more specifically insured against under Part 2 or Part 3 of this combined Policy.

## Part 2 – Public & Products Liability

We will indemnify the Insured according to the terms of this Policy in consideration of the payment of the premium and in reliance on the contents of the proposal and any other information submitted by the Insured or on its behalf.

### 2.1 INSURING CLAUSES

2.1.1 We will indemnify the Insured for the Insured's legal liability to pay compensation in respect of:

- (a) Injury, and/or
- (b) Damage, and/or
- (c) Advertising Injury

happening within the Policy Territory during the Period of Insurance as a result of an Occurrence in connection with the Business Activities.

2.1.2 We will also pay the Defence Costs incurred with Our prior written consent in the defence, settlement or investigation of any claim covered under clause 2.1.1.

### 2.2 LIMIT OF INDEMNITY AND EXCESS

2.2.1 The total amount payable by Us for General Liability will not exceed the Limit of Indemnity in respect of any one Occurrence or series of Occurrences arising out of one originating cause.

2.2.2 The total amount payable by Us for Products Liability will not exceed the Limit of Indemnity in respect of any one Occurrence or series of Occurrences arising out of one originating cause and in the aggregate during any one Period of Insurance.

2.2.3 Defence Costs will be paid in addition to the Limit of Indemnity. However, Our liability to pay Defence Costs in respect of any Occurrence will cease once We have paid compensation up to the Limit of Indemnity.

2.2.4 The Insured must pay the Excess specified by the Policy for each Occurrence that is the subject of a claim covered under clause 2.1.1. We are only required to indemnify the Insured for amounts over and above the Excess.

2.2.5 The Excess does not apply to Defence Costs.

2.2.6 For the purposes of applying the Limit of Indemnity and to determine the number of Excesses payable by the Insured, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

### 2.3 DEFINITIONS APPLICABLE TO PART 2

2.3.1 **Advertising Injury** means injury arising from:

- (a) libel, slander or defamation, or
- (b) any infringement of copyright or passing off of title or slogan, or



- (c) unfair competition, piracy, idea misappropriation contrary to implied contract, or
- (d) invasion of privacy

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the Insured's advertising activities.

**2.3.2 Business Activities** means:

- (a) the business activities specified in the Schedule conducted by the Insured, as well as all associated official activities conducted by the Insured, including social and fundraising activities; and
- (b) the provision and management of canteen facilities for the Insured's Employees' benefit; and
- (c) the Insured's ownership or occupation of the Insured's premises

**2.3.3 Contractor** means an individual, partnership or company which provides goods or services to the Insured under terms specified in a contract or agreement.

**2.3.4 Damage** means:

- (a) physical loss or destruction of, or damage to, tangible property, including its loss of use at any time as a result, and/or
- (b) loss of use of tangible property that has not been physically lost, destroyed or damaged provided that such loss of use is caused by or arises out of an Occurrence.

**2.3.5 Defence Costs** means the fees and expenses incurred by the Insured with Our prior written consent (consent will not be unreasonably withheld) in defending, settling or investigating a claim covered by the Policy.

**2.3.6 Employee** means any person employed by the Insured under a contract of service, traineeship or apprenticeship, including volunteers (but excluding workers on-hired from labour hire agencies).

**2.3.7 Employment Dispute** means any dispute arising from actual or alleged: unfair or wrongful dismissal, discrimination, denial of natural justice, workplace harassment, unfair or wrongful demotion (or failure to promote, employ or recommend for employment) of any person (including an Employee) or misleading representation or advertising with respect to employment, breach of a contract of employment, or any violation of any law concerning employment.

**2.3.8 Excess** means the amount specified in the Schedule.

**2.3.9 General Liability** means the Insured's legal liability for Injury, Damage or Advertising Injury as a result of any one Occurrence happening in connection with the Business Activities other than Products Liability.

**2.3.10 Injury** means:

- (a) death, bodily injury, illness, sickness, disease, disability,
- (b) shock, fright, mental anguish, humiliation, or loss of consortium or services as a result,
- (c) defamation,
- (d) unlawful arrest, unlawful imprisonment, wrongful detention, and/or
- (e) wrongful eviction, wrongful entry or other invasion of privacy

**2.3.11 Insured** means the following:

- (a) the Insured stated in the Schedule,
- (b) any subsidiary company (including subsidiaries thereof) of the Insured and any other organisation under the control of the Insured and over which it is exercising active management,
- (c) any new organisation acquired during the Period of Insurance by the Insured described in 2.3.11(a) and 2.3.11(b) through consolidation, merger, purchase or assumption of control and active management, provided that such acquisition or assumption is:
  - i. reported to Us within ninety (90) days after it is acquired, and
  - ii. endorsed onto this Policy,
- (d) any director, officer, employee, partner or shareholder of the Insured or of a company designated in 2.3.11(a), 2.3.11(b) or 2.3.11(c) above, but only whilst acting within the scope of their duties in connection with the Business Activities,
- (e) any voluntary worker and any person whilst working but only in respect of the conduct of the Business Activities for the purpose of gaining work experience and/ or any person supplied under any work experience or similar Government scheme. Such voluntary worker or person shall only be entitled to indemnity only if they are not entitled to indemnity under any other policy of insurance,
- (f) if a party named in the Schedule as an Insured is an individual, the spouse and family of that individual but only in connection with the Business Activities,
- (g) any person in respect of their liability arising out of the performance of any contract or agreement on behalf of an Insured designated in 2.3.11(a), 2.3.11(b) and 2.3.11(c) above but only in respect of the conduct of the Business Activities and only to the extent required by such contract or agreement,
- (h) if the Insured is declared in the Schedule as a partnership or joint venture, any partner or member thereof but only with respect to their liability as a partner or member of such partnership or joint venture in connection with the Business Activities,
- (i) the personal representatives of the Insured in respect of liability incurred by the Insured whilst acting on behalf of the Insured but only in connection with the Business Activities,
- (j) Any Member of the Insured but only where such a Member is not entitled to indemnity under any other policy of insurance.

**2.3.12 Limit of Indemnity** means the amount(s) stated in the Schedule or any lesser limit shown in the Schedule or Policy. The Limit of Indemnity is:

- (a) the maximum amount We shall be liable to pay in respect of any one claim or series of claims for General Liability arising from any one Occurrence, and
  - (b) the maximum amount We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability.
- 2.3.13 **Member** means any member, temporary or trialling member, or any other person actively engaged in and appropriately registered for the purposes of taking part in the Business Activities of the Insured.
- 2.3.14 **Molestation** means any any actual or alleged act of molestation, sexual abuse or sexual assault of any person, including indecent exposure, sexual harassment or sexual intimidation.
- 2.3.15 **Occurrence** means an event that results in Injury and/or Damage and/or Advertising Injury neither expected nor intended by the Insured during the course of its Business Activities and includes the continuous or repeated exposure to substantially the same general conditions.
- 2.3.15.1 With respect to Injury and/or Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.
  - 2.3.15.2 All Advertising Injury arising from the same injurious material or act (regardless of the frequency or repetition, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.
- 2.3.16 **Period of Insurance** means the period specified in the Schedule.
- 2.3.17 **Policy** means the Public & Products Liability policy in this Part 2, the General Exclusions, General Conditions and Claims Conditions, the Schedule, the written proposal made by the Insured to Us (including any attachments), and any endorsement to the Policy issued by Us at the commencement of or during the Period of Insurance.
- 2.3.18 **Policy Territory** means anywhere in the world except the United States of America and Canada and their territories and protectorates unless stated otherwise in the Schedule.
- 2.3.19 **Pollution** means pollution or contamination of the atmosphere or of any water, land or other tangible property.
- 2.3.20 **Product/s** means any goods (including containers, labelling, instructions or advice provided in connection therewith) manufactured, sold, supplied, distributed, altered, constructed, erected, repaired, serviced, designed, tested, installed or processed by or on behalf of the Insured and which are not in the possession of the Insured at the time of the Occurrence.
- Product does not include food or drink sold or supplied by or on behalf of the Insured primarily to the Insured's Employees as a staff benefit.
- 2.3.21 **Product Liability** means the Insured's legal liability for Injury and/or Damage arising from any Products or the reliance upon a representation or warranty made at any time with respect to such Products, but only where such Injury and/or Damage occurs away from premises owned or leased by, or rented to, the Insured and after physical possession of such Products has been relinquished to others.
- 2.3.22 **Qualified Instructor or Qualified Coach** means an individual who has obtained recognised qualifications or accreditations in a particular activity or specialist occupation which allows them to supervise and train in that activity or occupation.
- 2.3.23 **Schedule** means the schedule to this Policy containing the specific insurance details of the Policy issued by Us.

- 2.3.24 **Sub-Contractor** means an individual, partnership or company which provides goods or services to a Contractor under terms specified in a contract or agreement.
- 2.3.25 **Subsidiary** means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than 50 per cent of the issued voting shares of that entity, or any subsidiary at law.
- 2.3.26 **We/Us/Our** mean ATC acting under a binder as an agent of XL Insurance Company SE, Australia Branch (ABN 36 083 570 441)
- 2.3.27 **Worker to Worker Liability** means legal liability of the Insured arising directly or indirectly in respect of Injury to any Contractor or Sub-contractor (or their employees), or any labour-hire worker, engaged or hired by the Insured, or on its behalf, in respect of the Business Activities.

## 2.4 AUTOMATIC EXTENSIONS

These extensions are included automatically and are subject to the terms of the Policy except to the extent varied by the extension. They do not increase the Limit of Indemnity.

### 2.4.1 Multiple Insureds Clause

- (a) It is noted and agreed that if the Insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as described in this Multiple Insureds Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the sums insured and Limits of Indemnity including any inner limits set by memorandum or endorsement stated in the Policy.
- (b) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment Insurers' liability to all such parties arising from any one event giving rise to a claim under this Policy and (if applicable) in the aggregate.
- (c) It is further understood that the Insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- (d) It is further understood and agreed that Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the Insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this Policy each referred to in this clause as a Vitiating Act.
- (e) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are required in consequence of or otherwise following a Vitiating Act in which circumstances Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured.
- (f) The lenders to the project shall not be entitled to any indemnity under this Policy for or arising from loss or damage in respect of which Insurers are by reason of a Vitiating Act no longer liable to indemnify any one or more other insured party.

### 2.4.2 Representation costs

We will pay fees, costs and expenses incurred with Our prior written agreement, which is not to be unreasonably withheld or delayed, relating to the Insured's representation:

- (a) at any formal legal inquiry into the circumstances surrounding an Occurrence that resulted in the death of any person, including a coroner's inquest; or
- (b) at any other formal inquiry or proceeding in respect of any matter that is either the subject of a claim for indemnity under this Policy or could directly give rise to a claim for indemnity under this Policy.

Any representation costs payable under this extension will be treated as Defence Costs for the purpose of applying the Limit of Indemnity as stated in Section 2.2.

#### 2.4.3 First aid expenses

If We indemnify the Insured for Injury We will also pay the expenses reasonably and necessarily incurred by the Insured for first aid provided at the time of Injury.

#### 2.4.4 Temporary repairs

If We indemnify the Insured for Damage We will also pay the incurred by the Insured with Our prior agreement, which is not to be unreasonably withheld or delayed, for temporary repairs, shoring up or other protection of property belonging to others. Should emergency temporary repairs, shoring up or other protection of property belonging to others and We indemnify the Insured for Damage, We will pay the expenses incurred by the Insured without the need for Our prior agreement, which is not to be unreasonably withheld or delayed.

#### 2.4.5 New Subsidiaries, mergers and acquisitions

We will cover:

- (a) any Subsidiaries that are either created or acquired by the Insured during the Period of Insurance, and
- (b) any other entities that are merged into or acquired by the Insured, or over which the Insured becomes entitled to control its daily decision making, during the Period of Insurance,

for a period of thirty (30) days during the Period of Insurance from the date of creation, acquisition or merger (as the case may be) provided that We will only indemnify the Insured for its legal liability in relation to Injury and/or Damage and/or Advertising Injury first happening after the date of creation, acquisition or merger.

2.4.5.1 Cover under this extension will only apply to Subsidiaries and other entities whose business activity is of a similar nature as the Business Activities of the Insured.

2.4.5.2 Cover beyond thirty (30) days will only be available if application is made by the Insured and agreed to by Us and any additional reasonable premium paid.

#### 2.4.6 Care, Custody and Control

We will cover the Insured for:

- (a) premises occupied by the Insured for the purpose of the Business Activities;
- (b) premises (including their contents) temporarily occupied by the Insured for the purpose of carrying out works on those premises, but no indemnity is available for any liability for physical damage to that part of any premises on which the Insured is or was working to the extent that the Damage arises or arose from such work;
- (c) the clothing and personal effects of directors, partners, principals, Employees and/or visitors;

- (d) other property temporarily in the Insured's possession or physical or legal control, subject to the following provisos:
  - i. there is no cover available for liability in respect of physical damage to that part of any property upon which the Insured is or has been working; and
  - ii. Our liability to indemnify the Insured under this sub clause is limited to \$100,000 for each and every Occurrence.

## **2.5 SPECIFIC EXCLUSIONS APPLICABLE TO PART 2**

We will not cover the Insured for:

### **2.5.1 Assumed liability**

Any liability:

- (a) for delay in performance by the Insured or anyone acting on its behalf arising from any contract or agreement
- (b) under a contractual warranty, guarantee or undertaking unless liability would have been implied by law or would have existed in the absence of the contractual warranty, guarantee or undertaking.

This exclusion does not apply to liability that is assumed by the Insured under a lease of real or personal property (other than a provision which obliges the Insured to insure such property) or is assumed by the Insured under a warranty of fitness or quality in respect of Products.

### **2.5.2 Waiver of rights**

Any liability that the Insured has either waived or limited its right of recovery from another party (either in whole or in part).

### **2.5.3 Fines, penalties and aggravated damages**

Liability to pay: fines, penalties, aggravated, punitive or exemplary damages or liquidated damages.

### **2.5.4 Motor vehicles**

Liability arising out of the ownership, possession or use by or on behalf of the Insured of any motor vehicle or trailer for which compulsory insurance is required by legislation other than liability:

- (a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer, or
- (b) arising beyond the limits of any carriageway or thoroughfare by the loading or unloading of any motor vehicle or trailer, or
- (c) for damage to any bridge weighbridge road or anything beneath caused by the weight of any motor vehicle or trailer or of the load carried thereon, or
- (d) arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking,

and where such liability does not require compulsory insurance by legislation governing the use of any motor vehicle or trailer.

### 2.5.5 Care, custody or control

Property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in its care, custody or control unless otherwise covered under Automatic Extension 2.4.6.

### 2.5.6 Employment liability

(a) Liability for Injury to any Employee. Provided that if the Insured:

- i. is required by law to insure or otherwise fund, whether through self-insurance, a statutory fund or other scheme, all or part of any common law liability for such Injury (whether limited in amount or not), or
- ii. is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not an employee or worker within the meaning of the applicable workers' compensation law or the Injury is not an Injury that is subject to such law,

then this Policy will cover the Insured to the extent that the Insured's liability would not be covered under any such policy of insurance, self-insurance arrangement, fund or scheme had the Insured complied with its legal obligations.

- (b) Any other liability than that referred to under sub-paragraph a) imposed by any workers' compensation law.
- (c) Any other liability imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination, or any such contract of employment or workplace agreement.
- (d) Liability arising from any Employment Dispute

### 2.5.7 Products

- (a) Damage to any Product caused by or arising directly or indirectly out of any defect in a Product or their harmful nature or unsuitability.
- (b) Liability to pay for: the cost of recall, withdrawal from sale, inspection, disposal, repair or replacement of Products (or of any property of which they form a part) if such Products are withdrawn from the market or from use because of any known or suspected defect or deficiency in them; the cost of investigation into the cause of any defect or deficiency; or compensation in connection with the loss of use of such Products.
- (c) Liability to reinstate, repair or replace Products or to pay for the cost of such reinstatement, repair or replacement where the Damage was caused by those Products.
- (d) Any Product that is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.

### 2.5.8 Aircraft, watercraft and hovercraft

The ownership, maintenance, operation, possession or use by or behalf of the Insured of any aircraft, aerial device, watercraft (except watercraft while stored on land or that do not exceed eight metres in length) or hovercraft.



#### 2.5.9 Faulty workmanship

Liability to perform, complete or rectify any work carried out by or on behalf of the Insured, or to pay for the cost to do any of those things.

#### 2.5.10 Professional Indemnity

Liability arising from or in connection with any breach of duty owed by the Insured in a professional capacity except:

- (a) liability where such breach is in relation to advice or services given gratuitously, or
- (b) liability arising from advice given in relation to the use or storage of Products, or
- (c) the rendering of, or failure to render, or provide first aid and other miscellaneous medical services on the Insured's premises.

#### 2.5.11 Assault and battery

Liability for assault or battery committed by the Insured or at its direction, unless reasonably necessary for the purpose of preventing or eliminating danger to persons or property.

#### 2.5.12 Defamation

Liability for the publication or utterance of a defamatory statement made before the Period of Insurance or made by the Insured, or at its direction, with knowledge of its falsity.

#### 2.5.13 Advertising Injury

Liability to pay compensation for Advertising Injury arising from:

- (a) offences committed prior to the inception date of this Policy;
- (b) offences committed at the direction of the Insured with knowledge of the illegality or falsity thereof;
- (c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (d) incorrect description of the price of the Products, goods or services;
- (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this exception does not apply to titles or slogans;
- (f) failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability; or
- (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

#### 2.5.14 Pollution

- (a) Liability arising out of Pollution other than caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance.
- (b) All Pollution which arises out of one incident shall be deemed to have occurred at the time such incident takes place.
- (c) Our liability for all damages and compensation payable in respect of all Pollution which is deemed to have occurred during the Period of Insurance shall not exceed the Limit of Indemnity for any one Occurrence and in the aggregate in the Period of Insurance.

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#### 2.5.15 **Insurance**

Any Claim that is more specifically insured against under Parts 1 or 3 of this combined Policy.

#### 2.5.16 **Pure Financial Loss**

Any claim where no Injury or Advertising Injury or Damage has occurred.

## Part 3 - Management Liability

We will indemnify the Insured according to the terms of this Policy in consideration of the payment of the premium and in reliance on the contents of the proposal and any other information submitted by the Insured or on its behalf.

### 3.1 INSURING CLAUSES

#### 3.1.1 Directors' & Officers' Liability / Company Reimbursement

- (a) We will pay on behalf of each Insured Person the Loss arising from any Claim first made against any Insured Person and notified to Us during the Period of Insurance arising from a Wrongful Act (including an Employment Wrongful Act and a Trustee Wrongful Act) for which the Insured Entity is not permitted or required to indemnify them.
- (b) We will pay on behalf of the Insured Entity the Loss arising from any Claim first made against any Insured Person and notified to Us during the Period of Insurance arising from a Wrongful Act (including an Employment Wrongful Act and a Trustee Wrongful Act) for which the Insured Entity is permitted or required to indemnify them.

#### 3.1.2 Employment Wrongful Acts (Entity Cover)

We will pay on behalf of the Insured Entity the Loss arising out of any Claim first made against the Insured Entity and notified to Us during the same Period of Insurance arising from an Employment Wrongful Act.

#### 3.1.3 Trustee Wrongful Acts (Entity Cover)

We will pay on behalf of the Insured Entity the Loss arising out of any Claim first made against the Insured Entity and notified to Us during the same Period of Insurance arising from a Trustee Wrongful Act.

#### 3.1.4 Wrongful Acts (Entity Cover)

We will pay on behalf of the Insured Entity the Loss arising out of any Claim first made against the Insured Entity and notified to Us during the same Period of Insurance arising from a Wrongful Act.

#### 3.1.5 Defence Costs

- 3.1.5.1 We will pay the Defence Costs incurred with Our prior written consent in the defence, settlement or investigation of any Claim covered under insuring clauses 3.1.1 to 3.1.4 above.
- 3.1.5.2 We will advance Defence Costs prior to the final disposition of a Claim, regardless of whether We have determined the Insured's right to be indemnified by the Policy.

The advancement of any Defence Costs is subject to the following:

- (a) any advancement does not constitute Our agreement to indemnify the Insured under this Policy;
- (b) if any conduct by an Insured described within Specific Exclusion 3.5.9 below is established either by judgment or other final adjudication adverse to an Insured, or by any admission by an Insured that the conduct did occur, We may cease to advance Defence Costs for any Insured; and

- (c) such Defence Costs form part of the Limit of Indemnity (they are not in addition).

3.1.5.3 The Policy will only indemnify the Insured for Wrongful Acts committed after the retroactive date shown in the Schedule.

### 3.2 LIMIT OF INDEMNITY, ORDER OF PAYMENT AND EXCESS

- 3.2.1 Our total liability under this Policy for all insuring clauses combined for any one Claim (including Defence Costs) and in the aggregate for all Claims (including Defence Costs) will not exceed the Limit of Indemnity shown in the Schedule.
- 3.2.2 If the amount to dispose of any Claim exceeds the Limit of Indemnity Our liability for Defence Costs shall be in the same proportion as the Limit of Indemnity bears to the amount required to dispose of the Claim.
- 3.2.3 If the amount payable as Loss in respect of a Claim exceeds the remaining Limit of Indemnity We shall pay for Loss in the following order of precedence until the Limit of Indemnity has been exhausted: Loss covered by insuring clause 3.1.1 above, Loss covered by clause 3.4.3 below, and then Loss covered by any other clause of this Policy.
- 3.2.4 The Insured must pay the Excess specified by the Policy for each Claim. We are only required to indemnify the Insured for Loss arising from a Claim for amounts over and above the Excess.
- 3.2.5 The Excess does not apply to Defence Costs.
- 3.2.6 For the purposes of applying the Limit of Indemnity and to determine the number of Excesses applicable, all Claims will be treated as one Claim if they arise from causally connected or interrelated acts, errors or omissions.

### 3.3 DEFINITIONS APPLICABLE TO PART 3

- 3.3.1 **Associated Company** means a company in which the Insured Entity owns 25% or more of the issued voting shares (either directly or through one or more Subsidiaries) prior to or at the commencement of the Period of Insurance.
- 3.3.2 **Claim** means:
  - (a) a demand for compensation or damages made by a third party in writing, or any writ, statement of claim, summons, application, or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served on the Insured, alleging a Wrongful Act,
  - (b) a criminal proceeding commenced by summons or charge arising from a Wrongful Act, and/or
  - (c) a formal regulatory or administrative proceeding commenced by order or charge.
- 3.3.3 **Defence Costs** means the fees, expenses and charges incurred with Our prior written consent in defending, settling or investigating a Claim covered by the Policy. For the purpose of Automatic Extension 3.4.3 below (Public Examinations / Official Investigations), Defence Costs means the reasonable fees, expenses and charges incurred with Our prior written consent in connection with the examination, investigation, inquiry or attendance.

Defence Costs does not include in any circumstances the regular or overtime wages, salaries or fees of any director, officer or Employee of the Insured Entity.
- 3.3.4 **Documents** means deeds, wills, agreements, maps, plans, drawings, books, letters, contracts, certificates, forms and other documents of any nature whether printed, written, digitally or

electronically stored data, or reproduced by any other method but does not mean and excludes money, bank or currency notes, bearer bonds or coupons, stamps or any negotiable instrument.

**3.3.5 Employee** means any person employed by the Insured under a contract of service, traineeship or apprenticeship including volunteers (but excluding workers on-hired from labour hire agencies)

**3.3.6 Employment Benefits** means:

- (a) non-monetary benefits including but not limited to the provision of a company car, travel allowance, mobile telephone, medical or life insurance, education and training allowances, and equipment allowances;
- (b) stock or shares, or options in them, or any entitlement or right under any equity plan of any description, or any participation in any equity plan of any description;
- (c) severance or redundancy payments or entitlements;
- (d) benefits, payments or entitlements of any kind in respect of paid or unpaid leave;
- (e) bonus or incentive payments or any entitlement or right under a bonus or incentive plan (other than any payment, entitlement or right under a commission scheme); and/or
- (f) payments or contributions in respect of any superannuation, benefit, provident, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or at a particular age, or on the happening of a particular event.

**3.3.7 Employment Wrongful Act** means a Wrongful Act committed or allegedly committed against an Insured Person (or prospective one) or an agent, contractor or a consultant (including prospective ones) in relation to any actual or alleged:

- (a) unfair or wrongful dismissal or termination;
- (b) breach of an implied term of an oral or written employment contract;
- (c) discrimination;
- (d) workplace harassment;
- (e) defamation or humiliation arising from employment-related matters;
- (f) denial of natural justice;
- (g) breach of privacy;
- (h) unfair or wrongful demotion, deprivation of career opportunity or discipline;
- (i) unfair or wrongful failure to promote, employ or recommend for employment, or failure to grant tenure of employment;
- (j) negligent employee evaluation; and/or
- (k) misleading misrepresentation or advertising with respect to employment.

**3.3.8 Excess** means the amount stated in the Schedule.

**3.3.9 Extended Reporting Period** means the extension of time beyond the expiry date of the Period of Insurance during which time the Insured can give written notification of any Claim which is first made against the Insured during the Extended Reporting Period with respect to a Wrongful Act committed or allegedly committed prior to the expiry date of the Period of Insurance.

- 3.3.10 **Industrial Instrument** means an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute, or any other collective agreement, that regulates the terms and conditions of employment.
- 3.3.11 **Insured** means each Insured Person, each Insured Entity, or all.
- 3.3.12 **Insured Entity** means the entity or entities stated in the Schedule and includes any Subsidiary in existence at the inception date of the Period of Insurance and noted in the Insured's written proposal for this insurance.
- 3.3.13 **Insured Person** means any person who was, now is or may become a director, officer, trustee (including Trustees as defined in clause 3.3.25), secretary, or Employee of the Insured Entity, including any person who may be deemed to be a director or officer of the Insured Entity by any applicable legislation or law.
- 3.3.13.1 Insured Person does not include a liquidator, administrator, receiver, receiver and manager, official manager, trustee or any other type of insolvency practitioner or person administering a compromise or scheme of arrangement implemented between the Insured Entity and any other person or persons (and nor does it include an employee of such a practitioner or person).
- 3.3.13.2 Insured Person does not include any company, organisation or other corporate entity.
- 3.3.14 **Limit of Indemnity** means the applicable amount for each insuring clause as shown in the Schedule.
- 3.3.15 **Loss** means the total of the amounts the Insured is legally liable or compelled to pay in respect of a Claim (including compensation or damages by virtue of a judgement, award, settlement or otherwise) and Defence Costs.

However, Loss does not include:

- (a) fines or penalties imposed by law (either civil or criminal); aggravated, punitive or exemplary damages; or matters uninsurable by law,
- (b) tax, duties, rates, levies, charges, fees or any other revenue raising measure,
- (c) any amount that the Insured is or was required to pay pursuant to a specific obligation under a contract of employment or employment agreement, or pursuant to statute, an award, collective or individual agreement, minimum wage order or any other instrument authorised by statute that regulates the terms and conditions of employment,
- (d) back pay or any compensation or damages attributable to back pay where the Insured Entity is ordered by a court or tribunal to reinstate the claimant,
- (e) front pay or future loss, compensation, damages or economic relief (in each case, considered from the date when the claimant was to be reinstated) where the Insured Entity is ordered by a court or tribunal to reinstate the claimant but refuses or fails to do so for any reason,
- (f) any Employment Benefits or amounts attributable to any Employment Benefits,
- (g) any amounts you pay or are ordered to pay in relation to an unfair contract,
- (h) the cost to modify any building or property or to provide any service to make the building, property or service more accessible or accommodating for a disabled person, or

- (i) the cost of any educational, corrective, sensitivity or other programme, policy or seminar in connection with any Employment Wrongful Act.
- 3.3.16 **Not-For-Profit Organisation** means an entity that is prohibited or prevented from distributing any of its profits or assets to its members during its lifetime or upon its winding up by virtue of a written constitution.
- 3.3.17 **Outside Director** means an Insured Person who is a director, officer, secretary, trustee or other equivalent position holder in an Outside Entity at the request or direction of the Insured Entity.
- 3.3.18 **Outside Entity** means any Associated Company or Not-For-Profit Organisation named in the proposal and any other company, partnership, joint venture or organisation noted by endorsement to the Policy.
- 3.3.19 **Period of Insurance** means the period specified in the Schedule.
- 3.3.20 **Policy** means this Management Liability policy in this Part 3, the General Exclusions, General Conditions and Claims Conditions, the Schedule, the written proposal made by the Insured to Us (including any attachments), and any endorsement to the Policy issued by Us at the commencement of or during the Period of Insurance.
- 3.3.21 **Schedule** means the schedule to this Policy containing the specific insurance details of the Policy issued by Us.
- 3.3.22 **Securities** means any share, stock, note, bond, debenture, evidence of indebtedness, or other equity security or debt security of the Insured Entity and includes any certificate of interest or participation in, receipt for, warrant, certificate of deposit for, voting trust certificate or other interest in any of these things.
- 3.3.23 **Subsidiary** means any entity over which the Insured is in a position to exercise effective direction or control through ownership or control of more than 50 per cent of the issued voting shares of that entity, any subsidiary at law, and any entity whose financial accounts are incorporated into those of the Insured by virtue of the relevant Australian accounting standard.
- 3.3.24 **Superannuation Fund** means any single employer superannuation fund established for the benefit of Employees. It does not include any industry or master superannuation fund.
- 3.3.25 **Trustee** means any duly appointed Insured Person or Insured Entity as trustee of any Superannuation Fund whilst acting in that capacity.
- 3.3.26 **Trustee Wrongful Act** means any Wrongful Act in respect of the administration of a Superannuation Fund committed or allegedly committed by:
- (a) a Trustee,
  - (b) an Insured Person acting as a director, officer, or secretary of, or in a management role with, the Insured Entity where that Insured Entity is acting as a corporate Trustee of the Superannuation Fund, or
  - (c) any other person for which an Insured Person or an Insured Entity is legally liable.
- 3.3.27 **We/Us/Our** means ATC acting under a binder as an agent of XL Insurance Company SE, Australia Branch (ABN 36 083 570 441)
- 3.3.28 **Wrongful Act** means any actual or alleged breach of duty, breach of trust, error, omission, neglect, misleading statement or misstatement, or any other act committed or attempted by the Insured Entity, or by an Insured Person solely in their capacity as a director or officer of the Insured Entity or Outside Entity in the course of serving the Insured Entity or Outside Entity.



For the purpose of insuring clause 3.1.1 above the definition of Wrongful Act also includes an Employment Wrongful Act and a Trustee Wrongful Act.

### **3.4 AUTOMATIC EXTENSIONS**

These extensions are included automatically and are subject to the terms of the Policy except to the extent varied by the extension. Except for extensions 3.4.1 below and 3.4.3 below they do not increase the Limit of Indemnity.

#### **3.4.1 Automatic Reinstatement of Insuring Clause 3.1.1**

Although the Limit of Indemnity for any one Claim will not change, if the Limit of Indemnity is exhausted by reason of Claims under insuring clause 3.1.1 above, We will reinstate the Limit of Indemnity under insuring clause 3.1.1 above once during the Period of Insurance for claims which are new and non-related to any paid or outstanding claim.

#### **3.4.2 Continuous Cover**

3.4.2.1 We will cover the Insured against Loss resulting from any Claim that would otherwise be excluded by Specific Exclusion 3.5.1 below that arises from an act, error or omission that occurred prior to the Period of Insurance provided that:

- (a) We were the Insured's Management Liability insurer at the time when the Insured first became aware of the fact or circumstance from which the Claim arose, and
- (b) We continued without interruption as the Insured's Management Liability insurer from the time the Insured first became aware of the fact or circumstance to the time when the Claim is made and notified to Us.

3.4.2.2 We reserve the right to reduce the amount payable for any Claim by the amount that fairly represents any prejudice We have suffered as a result of the late notification.

3.4.2.3 The Limit of Indemnity under this extension shall be the lesser of that available under the policy in force at the time the Insured first became aware of the fact or circumstance and this Policy. The terms of this Policy will apply in all other respects.

3.4.2.4 This extension will not apply to a fraudulent non-disclosure of a fact or circumstance.

#### **3.4.3 Public Examinations / Official Investigations**

3.4.3.1 We will pay the Defence Costs (including the cost of legal representation) arising out of:

- (a) any legally required attendance by an Insured Person at any public examination, official investigation or inquiry in connection with the affairs of the Insured Entity or any other attendance required of an Insured Person in their capacity as a director or officer of the Insured Entity, or
- (b) any legally required attendance by the Insured Entity at any public examination, official investigation or inquiry in connection with any allegation that the Insured Entity has breached any occupational or workplace health and safety legislation or laws (that would otherwise

be excluded by Specific Exclusion 3.5.6 below) or any legislation or laws relating to employment

where the examination, investigation, inquiry or attendance may result in a finding or a recommendation with respect to liability (whether civil or criminal) or the institution of proceedings (whether civil or criminal) that could be the subject of a Claim covered by the Policy.

3.4.3.2 We will only provide cover under this extension if the Insured first receives notice of the public examination, official investigation, inquiry or attendance during the Period of Insurance and advises Us during the same Period of Insurance.

3.4.3.3 The maximum We will pay under this extension for all examinations, investigations and inquiries is limited to \$250,000. Defence Costs paid under this extension are in addition to the Limit of Indemnity.

#### 3.4.4 Former Subsidiaries

We will provide cover in respect of any entity that ceased to be a Subsidiary prior to the Period of Insurance or ceases to be a Subsidiary during the Period of Insurance, provided that cover will only be available with respect to Wrongful Acts, Employment Wrongful Acts or Trustee Wrongful Acts whilst it was a Subsidiary.

#### 3.4.5 New Subsidiaries

3.4.5.1 We will provide cover in respect of any Subsidiary that is created or acquired by the Insured Entity during the Period of Insurance, provided that at the time of its creation or acquisition:

- (a) the total gross assets of the new Subsidiary are less than 20% of the total gross assets of the Insured Entity, or
- (b) the gross annual turnover of the new Subsidiary is less than 20% of the total gross annual turnover of the Insured Entity.

3.4.5.2 Cover under this extension will only apply to Subsidiaries whose activities are of a similar nature to the Business Activities.

3.4.5.3 The cover provided by this extension will only apply with respect to Wrongful Acts, Employment Wrongful Acts or Trustee Wrongful Acts committed from or after the date of creation or acquisition.

3.4.5.4 For cover to apply under this extension, We must be advised within 60 days of the creation or acquisition of any Subsidiary and any additional premium must be paid to Us.

#### 3.4.6 Outside Directorships

3.4.6.1 We will provide cover in respect of Loss arising from any Claim made against an Insured Person who was, is or may become an Outside Director for any Wrongful Act, Employment Wrongful Act or Trustee Wrongful Act committed in their capacity as an Outside Director.

3.4.6.2 The cover provided by this extension shall not be construed to extend to the Outside Entity or to any of its directors, officers or employees.

3.4.6.3 The cover will be expressly in excess of any other insurance available to the Outside Director and the Outside Entity and in excess of any indemnity provided by the Outside Entity.

- 3.4.6.4 The cover provided by this extension shall not apply in connection with any Claim made against any Insured by any shareholder of the Outside Entity who owns or holds more than 20% of the issued and outstanding voting share capital of the Outside Entity.

#### 3.4.7 Severability and non-imputation

- 3.4.7.1 If more than one party is insured under this Policy the written proposal shall be construed as if it was a separate application for cover by each Insured and any statement or representation in the proposal or surrounding the proposal, or any knowledge possessed by an Insured, shall not be imputed to any other Insured.
- 3.4.7.2 Further, any breach of the terms or conditions of the Policy, or any other conduct by any Insured, shall not be imputed to any other Insured.
- 3.4.7.3 Provided always that:
- (a) the remaining Insured are entirely innocent of and had no prior knowledge of the conduct of the other Insured (or should not reasonably have been expected to have such knowledge) and as soon as reasonably practical after becoming aware of the conduct, advise Us in writing of all known facts in relation to the conduct, and
  - (b) this clause is not intended to limit the Insured's duty of disclosure under the *Insurance Contracts Act 1984*.
- 3.4.7.4 However, any state of mind or any knowledge possessed by any past or present chairman of the board, director, chief executive officer, chief operating officer or chief financial officer of the Insured Entity will be imputed to the Insured Entity.

#### 3.4.8 Estates, Heirs and Legal Representatives

We will provide cover to the estate, heirs, legal representatives or assigns of any deceased, mentally incompetent or insolvent Insured Person with respect to Loss arising from a Claim.

#### 3.4.9 Pollutants

- 3.4.9.1 We will pay the Defence Costs arising from any Claim that would otherwise be excluded by General Exclusion 4.16 below:
- (a) with respect to the actual or alleged discharge, seepage, dispersal, release or escape of any pollutants, or
  - (b) made by any shareholder of the Insured Entity either directly or derivatively that alleges loss or damage to the Insured Entity or its shareholders.
- 3.4.9.2 The cover provided for Defence Costs by this extension is sub-limited to \$100,000 for any one Claim and in the aggregate for all Claims during the Period of Insurance, which amount forms part of the Limit of Indemnity.

#### 3.4.10 Extended Reporting Period (Insuring Clause 3.1.1 above)

- 3.4.10.1 Subject to the provisos below, for the purposes of Insuring Clause 3.1.1 above only:
- 3.4.10.2 We will provide an Extended Reporting Period of 12 months if We have refused to offer terms for another Policy of the same or lesser Limit of Indemnity

(whether a replacement policy or otherwise) incepting on or from the expiry date of the Period of Insurance, or the Insured chooses not to effect another Policy issued by Us (whether a replacement policy or otherwise) incepting from the expiry date of the Period of Insurance.

3.4.10.3 The provision of an Extended Reporting Period is conditional upon the following provisos:

- (a) a written request being made from the Insured to Us prior to the expiry of the Period of Insurance;
- (b) payment of an additional full annual premium being received by Us within 30 days after the expiry of the Period of Insurance;
- (c) this Policy not being replaced or succeeded by any other policy providing directors' & officers' liability insurance;
- (d) the Limit of Indemnity shall not be increased in any way (including by operation of extension 3.4.1 above); and
- (e) the Extended Reporting Period may not be cancelled and the additional premium will not be refundable.

3.4.10.4 An Extended Reporting Period will not be available if this Policy is cancelled or voided.

#### 3.4.11 Retirement cover

Any Insured Person who has retired from all employment or office prior to the Period of Insurance shall be automatically entitled to a 12 month Extended Reporting Period at no additional premium after the expiry of the Period of Insurance, provided that:

- (a) the Insured Entity does not renew this Policy or replaces it with any other policy providing directors' & officers' liability insurance, and
- (b) an Extended Reporting Period pursuant to clauses 3.4.11 (a) has not been purchased.

#### 3.4.12 Spouses

We will provide cover for any Claim made against an Insured Person's legal or de facto spouse in respect of Loss arising from a Wrongful Act, an Employment Wrongful Act or a Trustee Wrongful Act committed by that Insured Person.

#### 3.4.13 Monetary Penalties

3.4.13.1 Notwithstanding Specific Exclusion 3.5.6 below (Bodily Injury), We will pay the amount of any monetary penalties an Insured Person and/or an Insured Entity is ordered to pay by a court or tribunal to any Regulatory Authority, subject to the following provisos:

- (a) We will only pay such amounts to the extent that We are not prohibited from doing so by law, and
- (b) We will not be liable to make any payment in connection with any monetary penalties that directly or indirectly arise out of any wilful, reckless or grossly negligent conduct by an Insured Person or an Insured Entity or any known or intentional breach or violation of law by an Insured Person or an Insured Entity, and

- (c) The maximum amount payable under this extension during the Period of Insurance is \$50,000 in the aggregate for all Insured Persons, which amount forms part of the Limit of Indemnity.

3.4.13.2 A "Regulatory Authority" means a person or entity appointed, constituted or acting under a delegated authority to any Act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia.

3.4.13.3 For the purpose of this extension, the definition of Loss is amended accordingly.

#### 3.4.14 Public Relations Cover

3.4.14.1 We will pay the reasonable fees and expenses incurred by an Insured Person with Our prior written agreement to engage a public relations consultant:

- (a) in connection with a Claim for extradition of the Insured Person, or
- (b) for the purposes of ameliorating damage to the Insured Person's reputation, provided that the Insured Person has been exonerated from fault, liability or culpability by final adjudication (including the outcome of any appeal procedure) of a court or tribunal of competent jurisdiction in connection with a Claim accepted by Us as covered by the Policy.

3.4.14.2 The maximum amount payable under this extension during the Period of Insurance is \$100,000 in the aggregate for all Insured Persons, which amount forms part of the Limit of Indemnity.

#### 3.4.15 Preservation Of Indemnity (Insuring Clause 3.1.1 (b) above)

If the Insured Entity is permitted or required to indemnify an Insured Person in respect of a Claim in terms of insuring clause 3.1.1(b) above, but for whatever reason fails to do so, We will pay on behalf of the Insured Person any Loss arising from the Claim, but only to the extent that the Insured Entity could have indemnified that Insured Person as permitted or required by law. The amount of the Excess applicable to insuring clause 3.1.1 (b) above will be payable to Us by the Insured Entity unless it is unable to do so due to its insolvency.

#### 3.4.16 Dishonesty

We will cover Claims that would otherwise be excluded by Specific Exclusion 3.5.9 below, but We will not cover:

- (a) any person who commits, condones or authorises any dishonest, fraudulent, malicious, criminal or reckless act, error or omission; or
- (b) any loss of money, negotiable instruments, bonds, coupons, currency, bank notes or stamps.

#### 3.4.17 Loss of Documents

Notwithstanding Specific Exclusion 3.5.13 below, We will cover the Insured for the Insured's liability for the loss of or damage to Documents not owned by the Insured but in the Insured's care, custody or control at the time of the loss or damage (but excluding any loss or damage due to wear and tear or other gradual deterioration) provided that:

- (a) the loss or damage is first discovered during the Period of Insurance;
- (b) the Insured gives Us notification of the loss or damage within 30 days of its discovery;

- (c) the Insured can supply Us with original receipts or other documentation to verify the fact of Documents being lost or damaged;
- (d) Our liability to indemnify the Insured is limited to the reasonable costs and expenses incurred with Our prior written consent which is not to be unreasonably withheld, to replace or restore the Documents; and
- (e) Our total liability under this extension is limited to \$100,000 in the aggregate.

### **3.5 SPECIFIC EXCLUSIONS**

We will not cover the Insured under the Policy for Loss in connection with:

#### **3.5.1 Known Claims / Circumstances**

Liability for any Claim:

- (a) first made or threatened against the Insured before the inception date of the Policy;
- (b) arising from any fact or circumstance that the Insured knew or ought reasonably to have known before the inception date of the Policy might give rise to a Claim;
- (c) that has been notified under any previous policy or was stated on the proposal (or any declaration or other underwriting information on which this Policy is based); or
- (d) arising from any fact or circumstance that has been notified (or ought reasonably to have been) under any previous policy or was stated on the proposal (or any declaration or other underwriting information on which this Policy is based).

#### **3.5.2 Breach of Professional Duty**

3.5.2.1 Liability for any Claim that directly or indirectly arises from any breach of a professional duty of care in the provision of professional services or advice by an Insured Person.

3.5.2.2 This exclusion does not apply to Wrongful Acts, Employment Wrongful Acts or Trustee Wrongful Acts committed by an Insured Person in the course of carrying out a duty to the Insured Entity or the Outside Entity solely in their capacity as a director, officer or Trustee.

#### **3.5.3 Insured versus Insured**

Liability for any Claim made by or on behalf of any Insured Entity or any Outside Entity, provided that this exclusion shall not apply to:

- (a) Defence Costs,
- (b) any Claim brought or maintained by the Insured Entity for contribution or indemnity if the Claim directly results from another Claim otherwise covered by the Policy,
- (c) any shareholder derivative action brought by or on behalf of any Insured Entity or Outside Entity without any solicitation from or active participation of any Insured Person or any director, officer, trustee or equivalent position holder of any Outside Entity (except where such solicitation or active participation is required by law);
- (d) any Claim brought or maintained by a court appointed liquidator, receiver, receiver and manager, administrator or similar insolvency practitioner on behalf of any Insured Entity or Outside Entity where such Claim is brought without any solicitation from or active participation of any Insured Person or any director, officer, trustee or equivalent position

- holder of any Outside Entity (except where such solicitation or active participation is required by law); or
- (e) any Claim brought by or on behalf of any former Insured Person, unless he or she was an Insured Person at the time that the Wrongful Act was committed.

#### 3.5.4 Shareholders (15%)

Liability for any Claim made by any shareholder of the Insured Entity (whether in the name of the shareholder or the Insured Entity) but only when that shareholder owns 15% or more of the Insured Entity's issued voting share capital, either directly or beneficially.

#### 3.5.5 Superannuation Liability

Liability for any Claim directly or indirectly arising from or in connection with any failure by the Insured Entity to pay for, provide for or collect any contributions to an employer superannuation or pension fund established for the benefit of Employees as required by law or any trust deed in relation to such a fund, or liability for any Claim to pay any amount to a beneficiary of such a fund.

#### 3.5.6 Bodily injury

Liability for any Claim that directly or indirectly arises from or is in connection with the death of or bodily injury (including illness, disability, shock, fright, mental anguish or mental injury as a result of the bodily injury) to any person. However, this exclusion shall not apply to any Claim arising out of an Employment Wrongful Act to the extent that cover will be available for Claims for emotional distress or any other mental or emotional anguish.

#### 3.5.7 Property Damage

Liability for any Claim that directly or indirectly arises from or is in connection with the loss, damage or destruction of any tangible property.

#### 3.5.8 Unfair Contract

Liability for any Claim arising out of any actual or alleged participation in any unfair contract of employment.

#### 3.5.9 Dishonest, Fraudulent or Wilful acts

Liability for any Claim that directly or indirectly arises from, or is attributable to, any dishonest, fraudulent, malicious or criminal acts, errors or omissions.

This exclusion will only apply where such conduct is established either by judgement or other final adjudication adverse to the Insured or by any admission by the Insured that the conduct did in fact occur.

#### 3.5.10 Personal Benefit

Liability for any Claim that directly or indirectly arises from, or is attributable to, any Insured Person:

- (a) improperly benefiting in fact from any dealings or transactions in Securities as a result of possessing information not available to the market place for such Securities, or
- (b) gaining in fact any personal profit or advantage to which they were not legally entitled.

This exclusion will only apply where such conduct is established either by judgement or other final adjudication adverse to the Insured or by any admission by the Insured Person that the conduct did in fact occur.



### 3.5.11 Prospectuses / Public Offerings

Liability for any Claim that directly or indirectly arises out of or is in connection with:

- (a) any public sale or public issue of any Securities of the Insured Entity or the Outside Entity, or
- (b) the issue of any document in the nature of a prospectus or other offering document, information memorandum, registration document or similar document (including information and data collated in the process of preparing such a document) for the purpose of raising or restructuring capital for the Insured Entity or an Outside Entity by the sale, issue or transfer of any Securities of the Insured Entity or the Outside Entity.

### 3.5.12 Insolvency

Liability for any Claim that directly or indirectly arises out of or is in connection with: the insolvency, liquidation, bankruptcy, receivership or administration of the Insured Entity or an Outside Entity; the Insured Entity or the Outside Entity trading unprofitably; or the inability (whether actual or alleged) of the Insured Entity or Outside Entity to pay all or some of their debts when they fall due.

### 3.5.13 Documents

Any Claim arising from the loss or destruction of, or any damage to, Documents

### 3.5.14 Insurance

Any Claim that is more specifically insured against under the other parts of this combined Policy.

## 3.6 ADDITIONAL EXCLUSIONS TO INSURING CLAUSE 3.1.2 above

The following additional exclusions apply to insuring clause 3.1.2 above (and any applicable extension to insuring clause 3.1.2 above):

- 3.6.1 We will not pay for Loss arising from any Claim made against the Insured Entity in connection with:
  - (a) any industrial dispute, strike, work-to-rule, work bans, overtime bans, go-slows, picketing, sit-ins, lock-outs, demonstrations or any other industrial action; or
  - (b) workers' compensation or occupational, health and safety acts or similar laws and legislation.

## 3.7 ADDITIONAL EXCLUSIONS TO INSURING CLAUSE 3.1.4 above

The following additional exclusions also apply to insuring clause 3.1.4 above (and any applicable extension to insuring clause 3.1.4 above):

- 3.7.1 We will not pay for Loss arising from any Claim made against the Insured Entity in connection with:
  - (a) any actual or alleged breach of trust, confidentiality or privacy and/or infringement of any intellectual property rights, including copyright, trademark, design, patent or trade secret;
  - (b) any actual or alleged breach of statute, regulation or common law relating to anti-trust, business competition, price fixing, unfair or restrictive trade practices;

- 
- (c) tortious interference in another's business or contracts;
  - (d) any actual or alleged contractual liability of the Insured Entity pursuant to any express or implied contract or agreement;
  - (e) an obligation, or breach of an obligation, under any law or regulation to provide for paid or unpaid leave of any kind;
  - (f) an obligation, or breach of an obligation, under any Industrial Instrument;
  - (g) any actual or alleged obligation under any law, regulation or Industrial Instrument in connection with workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, social security benefits or similar obligation; or
  - (h) any Claim in respect of an Employment Wrongful Act or a Trustee Wrongful Act.

## Part 4 - General Exclusions

The following exclusions apply to all Policies unless stated otherwise. We will not indemnify the Insured against the following:

### 4.1 Terrorism

- 4.1.1 Death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- 4.1.2 This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.
- 4.1.3 For the purpose of this exclusion, "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.

### 4.2 USA and Canada

Any legal liability:

- (a) that arises directly or indirectly out of any act, error or omission committed within the territorial limits of the United States of America or Canada or their territories or protectorates;
- (b) for any action or proceeding for damages that is brought against the Insured in a court of law of the United States of America or Canada or their territories or protectorates;
- (c) Any action or proceeding for the enforcement of any judgement, order or award obtained in or pursuant to the laws of the United States of America or Canada or their territories or protectorates; or
- (d) Any legal liability that arises directly or indirectly out of the export of the Insured's Products or services to the United States of America or Canada.

unless agreed otherwise by Us.

### 4.3 War and invasion

Legal liability in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition or damage to property by or under the order of any government or local authority.

### 4.4 Radioactive, contamination, chemical, biological, bio-chemical and electromagnetic weapons

Loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel,
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof,

- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter (the exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes), or
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

#### 4.5 **Asbestos**

Any actual or alleged legal liability whatsoever in respect of claims directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

#### 4.6 **Non-medically prescribed drugs**

Any legal liability arising directly or indirectly from the use of non-medically prescribed drugs.

#### 4.7 **Computers and electronic data**

Any legal liability:

- (a) arising anywhere in the world caused by, contributed to by, or arising directly or indirectly from loss or damage to Electronic Data or caused by or arising directly or indirectly out of the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data or any error in creating, amending, entering, deleting or using Electronic Data or total or partial inability or failure to receive, send, access or use Electronic Data for any time at all or any consequential loss resulting from any of these things.

For the purpose of this exclusion, "Electronic Data" means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

- (b) arising anywhere in the world caused by, contributed to by, or arising directly or indirectly out of or in connection with the use of the internet or any intranet by any of the Insured

#### 4.8 **Molestation**

Any legal liability arising directly or indirectly from, or in connection with:

- (a) Molestation, mental or physical abuse, or assault of persons; or
- (b) any act of indecency; or
- (c) the failure to detect, act upon or prevent the Molestation of, interference with, mental or physical abuse of or harassment, intimidation or assault of persons or acts of indecency, by:
  - (i) the Insured; or
  - (ii) any agent of the Insured; or
  - (iii) any person performing any volunteer service for or on behalf of the Insured.

The Insurer shall not defend any claim against the Insured directly or indirectly arising from or in respect of Molestation, interference, mental abuse, physical abuse, assault, harassment, intimidation or any act(s) of indecency or a failure to detect, act upon or prevent Molestation, interference, mental abuse, physical abuse, assault, harassment, intimidation or act(s) of indecency.

#### **4.9 Tobacco and smoking**

Any legal liability arising directly or indirectly from the inhalation or ingestion of, or exposure to, tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

#### **4.10 Child care**

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

#### **4.11 Demolition, excavation and building works**

Any legal liability arising directly or indirectly out of, or in connection with:

- (a) demolition of property exceeding ten metres from ground level,
- (b) pile driving tunnelling or quarrying,
- (c) excavations below three metres in depth, or
- (d) the erection striking or alteration of scaffolding equipment for any purpose.
- (e) the erection, demolition, alteration of and/or addition to any buildings or structure by or on behalf of the Insured where the total cost of such works exceeds \$100,000.

#### **4.12 Underground cables**

Any legal liability for Damage to cables pipes or other services located underground unless the Insured has:

- (a) taken or caused to be taken all reasonable measures to identify the location of such cables pipes and services before any work is commenced which may involve a risk of damage thereto (reasonable measures include contacting the appropriate authorities where it is possible cables pipes or services are under the site),
- (b) retained a written record of the measures which were taken to locate such cables pipes or other services, or
- (c) conveyed the location of such cables pipes and services to Employees or others who are carrying out such work on behalf of the Insured.

#### **4.13 Participant to participant**

Any legal liability for Injury to any person arising directly or indirectly out of the actual participation by that person in the Business Activities (including practice, trials, training and competition) provided such Injury is caused by another person who is also participating in the same Business Activities, unless agreed otherwise by Us.

#### **4.14 Fees and debts**

Any Claim arising from any liability to refund the Insured's professional fees or charges, or to pay trading debts.

#### 4.15 **Solarium use**

Any legal liability directly or indirectly arising from:

- (a) the use of any equipment that can be used for the purpose of artificial sun tanning, or
- (b) the presence of such equipment on your premises.

#### 4.16 **Pollution (Applicable to Part 1 and Part 3 only)**

Any Claim arising directly or indirectly out of the actual or alleged discharge, dispersal, seepage, release or escape (whether intentional or accidental) of any pollutants into the atmosphere, into or upon any land or into any body of water (including a waterway or water course), or arising from or in connection with any enforcement action by any public official or agency, or any direction or costs to test for, monitor, remove, clean, contain, treat, detoxify or neutralise any pollutants.

For the purpose of this exclusion, "pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste ("waste" includes material to be recycled, reconditioned).

#### 4.17 **Malicious Damage**

Any claim caused by a deliberate act of Insured or others for whom the Insured is responsible.

#### 4.18 **Claims outside of the Commonwealth of Australia and New Zealand**

Any claim brought against the Insured in any country or jurisdiction outside of the Commonwealth of Australia and New Zealand, unless specifically agreed otherwise.

#### 4.19 **Cyber**

Any loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

#### 4.20 **Communicable Disease Exclusion**

Notwithstanding any provision to the contrary within this Policy, this Policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- (b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

- (c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

#### **4.21 Sanction Limitation and Exclusion Clause**

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



## Part 5 - General Conditions

The following conditions apply to all Policies unless stated otherwise:

### 5.1 Payment of premium

Our liability to indemnify the Insured is conditional upon the Insured having paid the premium.

### 5.2 Reasonable care (Applicable to Part 2 only)

The Insured must:

- (a) take reasonable precautions to prevent Injury and/or Damage and/or Advertising Injury occurring and to prevent the manufacture, sale or supply of defective Products;
- (b) ensure that only competent employees use, operate, maintain and service plant and equipment;
- (c) maintain all premises, fittings, plant and equipment in sound condition; and
- (d) at its own expense, act as soon as reasonably practicable to trace, recall or modify all Products that it knows or has reason to suspect are defective or deficient.

### 5.3 Alteration to risk

The Insured must notify Us as soon as reasonably practicable of any material change to the nature of the Business Activities of the Insured or any act of insolvency or bankruptcy of the Insured, including an inability to pay debts as and when they fall due.

If the Insured fails to notify Us, We will not be obliged to indemnify the Insured for any claim made under this Policy.

### 5.4 One contract

The Policy and the Schedule shall be read together as one contract of insurance and any word or expression to which a specific meaning applies in any part of this Policy or the Schedule shall have the same meaning wherever it may appear.

### 5.5 Other insurance

If the Insured seeks indemnity under any Policy in respect of a liability that is or may be covered in whole or in part by any other insurance, then the Insured must advise Us of the full details of such other insurance when making a claim with Us.

Subject to the *Insurance Contracts Act 1984*, We reserve the right to seek contribution from other insurer(s).

### 5.6 Insurance arranged by Principal

If the Insured enters into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to provide a policy of insurance which is intended to indemnify the Insured for any loss or liability arising out of the performance of the said agreement, then We will (subject to the terms and conditions of this Policy) only indemnify the Insured for loss or liability not covered by the policy of insurance provided by the Principal.

### 5.7 Premium adjustment

If We have calculated the premium based on statements and estimates supplied by the Insured, within a reasonable time after the expiry of the Period of Insurance the Insured shall provide

Us with such information as We may require for that period and the premium will be adjusted by Us and the difference paid by the Insured or allowed by Us (as the case may be), subject to any minimum premium.

The Insured shall keep records of the information requested by Us and upon reasonable notice allow Us or Our nominee to inspect and make copies of those records.

## 5.8 Jurisdiction

This Policy shall be interpreted in accordance with the laws of Victoria, Australia and the Victorian courts, tribunals or the Insurance List of the Federal Court of Australia (Melbourne Registry) shall have exclusive jurisdiction to hear any disputes arising under this Policy or relating to the application of this Policy.

The language of this policy and all communications relating to it will be in English.

## 5.9 Cancellation

### (a) Cancellation by the Insured during Cooling-Off Period:

The Insured have the right to cancel the Policy by notifying Us in writing within fourteen (14) days of the date the Policy was issued to the Insured (Cooling-Off Period). The Insured is entitled, during the Cooling-Off Period, to a complete refund of the amount the Insured has paid for the Policy. If the Insured choose to cancel the Policy during the Cooling-Off Period, We will treat the Policy as never having existed.

The Insured is not entitled to a refund if, during the Cooling-Off Period, the Policy has already expired or if the Insured has made a claim under the Policy.

### (b) Cancellation by the Insured after Cooling-Off Period:

The Policy may be cancelled by the Insured at any time by giving notice in writing to Us. Such cancellation will be effective from the date upon which We physically receive your notice. Upon receipt of such notice the Insured will be entitled to a pro rata refund of premium on a proportional basis for that portion of the Policy not utilised, less any administration fees imposed by Us and any Government taxes or duties We are unable to recover.

### (c) Cancellation by Us:

The Policy may be cancelled by Us in accordance with the provisions of the Insurance Contracts Act 1984. The Insured will be entitled to a proportional refund of premium for that portion of the Policy not utilised less any administrative fees imposed by Us and any Government taxes or duties We are unable to recover.

Subject at all times to Us retaining any minimum Policy premium amount in force at the time of cancellation.

In the event that the Insured has made a claim or notification under the Policy, the Insured will not be entitled to a pro-rata refund for any unused portion of the premium.

Should the Policy be issued on a seasonal basis, this will be considered when calculating a pro-rata refund of premium.

## 5.10 Assignment

The Insured must not assign the Policy or any rights under the Policy without first obtaining Our consent in writing by endorsement to the Policy.

#### 5.11 Goods and Services Tax (GST)

Where the Insured makes any payment relevant to a Claim covered under this Policy that includes GST, or where the Insured would pay such an amount, We will indemnify the Insured for that GST less any input tax credit the Insured is or would be able to claim for it (the "GST amount").

We will pay the GST amount in addition to the Limit of Indemnity shown in the Schedule. If the Limit of Indemnity is not sufficient to cover the amount of the Claim, We will only pay the GST amount that relates to Our payment under the Policy.

We will reduce the GST amount by the amount of any input tax credit that the Insured is or would be entitled to.

We will not indemnify the Insured for any GST liability that arises due to the Insured's failure to notify Us of the Insured's entitlement or correct entitlement to an input tax credit on the premium.

#### 5.12 Allocation (Applicable to Part 3 only)

If a Claim is made against an Insured that is only partly covered by the Policy and We are only required to pay for part of the Loss on behalf of the Insured then We and the Insured agree to use Our best endeavours to attempt to fairly and properly allocate any payments (including Defence Costs) between the insured and uninsured portions of the Claim.

If We and the Insured fail to agree on an allocation of Loss, We may, at the Insured's request, refer the matter to an independent and expert arbitrator, being a Senior Counsel mutually agreed upon, who may determine a fair and proper allocation of Loss based on the relative legal and financial exposures attributable to the insured and uninsured portions of the Claim.

#### 5.13 Confidentiality (Applicable to Part 3 only)

The Insured (or any person or entity acting on the Insured's behalf or at the Insured's direction) must not disclose or reveal to any third party the existence of this Policy, the nature of the cover provided, the Limit of Indemnity, or the amount of premium paid or stated in the Schedule.

The Insured may only disclose this information if required to by law or if We have given Our prior written consent which is not to be unreasonably withheld.

#### 5.14 Changes in the risk (Applicable to Part 3 only)

##### 5.14.1 If during the Period of Insurance:

- (a) the Insured Entity consolidates with, merges into or sells all (or substantially all) of its assets to another person or entity (including a group of persons and/or entities acting in concert), or
- (b) any other person or entity (including a group of persons and/or entities) becomes entitled to exercise more than 50% of the voting rights at general meetings of the Insured Entity (or otherwise control the appointment of directors who are able to exercise a majority of votes at board meetings of the Insured Entity)

the Insured must notify Us in writing within 30 days of either of the events described in subparagraphs (a) and (b) taking effect.

The cover provided by the Policy will only apply to Wrongful Acts, Employment Wrongful Acts or Trustee Wrongful Acts committed prior to the date that the events described in subparagraphs (a) and (b) take effect.

##### 5.14.2 If during the Period of Insurance the Insured Entity determines to offer its Securities in any jurisdiction, regardless of whether its Securities are currently traded (either publicly or by private

sale), the Insured Entity shall advise Us immediately, or as soon as practicable, after the offer becomes public knowledge so that We can evaluate the increased risk of the Insured.

In these circumstances, We reserve the right, and will be entitled, to amend the terms and conditions of the Policy and to charge a reasonable further premium.

#### 5.15 **Severability**

In the event that any part of this Policy is found to be invalid or unenforceable, the remainder of the Policy shall remain in force.

## Part 6 - Claims Conditions

- 6.1 The Insured shall notify Us in writing as soon as reasonably practicable of any claim and provide information that We or Our representatives reasonably require to investigate the claim.
- 6.2 The Insured must not make any admission of liability, promise or payment (or offer of payment), or incur any costs or expenses in connection with any claim, without Our prior written consent which is not to be unreasonably withheld.
- The Insured must at its own expense take steps as may be necessary or reasonably require to avoid or minimise any actual or potential loss, injury or damage arising from any actual or possible claim under this Policy.
- 6.3 We shall be entitled to take over the defence or settlement of the claim in the name of the Insured, and We will have full discretion and control in doing so, and the Insured shall provide Us at their own expense with all assistance and information that We may reasonably require.
- 6.4 The Insured shall not be required to contest any claim unless a Senior Counsel (mutually agreed upon by the Insured and Us) advises that the claim should be contested based upon the likelihood of success (including a consideration of any costs recoverable from the third party), the likely amount of all Defence Costs, and the likely amount of damages and costs recoverable by the third party.
- 6.5 The Insured may elect to contest a claim, but if We consider that the claim should be settled Our liability to indemnify the Insured will not exceed the total amount for which the claim could have been settled (including the Defence Costs incurred up to the date of the election by the Insured).
- 6.6 We may at any time pay to the Insured in connection with any claim or series of claims an amount equal to the indemnity available under the Policy or any lesser amount for which the claim or claims could be settled. If We make such a payment We shall relinquish the control of and have no further liability for such claim/s.
- 6.7 We shall be entitled to direct the Insured to conduct the defence or settlement of any claim if We consider that the claim will not exceed the Excess. We will reimburse the Insured for all reasonable costs and expenses in the event that any payment made to dispose of the claim exceeds the Excess.
- 6.8 We shall be entitled to claim indemnity or contribution at any time in the name of the Insured from any party against whom the Insured may have such rights and the Insured shall provide all assistance and information We reasonably require to exercise Our rights of subrogation, including the signing of statements and the giving of evidence.