

# Policy Wording



## Investment Management Insurance





## Policy Wording

### Investment Management Insurance

This Policy is issued / insured by AIG Australia Limited, ABN 93 004 727 753, AFSL 381686, Level 19, 2 Park Street, Sydney NSW 2000.

**This document contains your Insurance Policy terms, Provisos, Exclusions and Conditions. It is important that you read and understand it and retain it in a safe place.**

#### About AIG

This insurance is issued by us, the **Insurer**.

#### About the Policy

The **Insurer** and the first named **Policyholder** agree to the issuance of the Policy in consideration of the payment of the **Premium** or agreement to pay the **Premium**.

Your Policy is made up of this document including the Schedule and any endorsements and they should all be read as one document. Your Policy is a legal contract between you and us.

Some Covers and Extensions under this Policy apply to **Claims** first made, other matters covered under Section 1, Section 2 or Section 3 of this policy first arising or **Direct Financial Loss** first **Discovered**, in the **Policy Period** and reported to **Insurers** as soon as possible and during the **Policy Period** or during an applicable **Discovery Period**.

If you think that any details contained in these documents are not correct or if you need to change anything, you should ask your insurance intermediary to tell us.

You are only insured for those Policy Sections that are shown as 'Included' under 'Section Included' in the Schedule.

There are specific Policy provisions that only apply to a specific Policy Section. In addition, there are general provisions that are part of this Policy and apply to each Policy Section.

#### Copyright

The contents of this Policy, including but not limited to the text and images herein, and their arrangement, is the copyright property of **Insurer**. All rights reserved. The **Insurer** hereby authorises you to copy and display the content herein, but only in connection with the **Insurer's** business and as provided for in the '*General Provisions – Confidentiality*' provision. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to the **Insurer**; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this Policy without the prior written permission of the **Insurer**. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of the **Insurer** or of any third party.



## Important Notice

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### Claims-made and Notified Insurance

This Policy contains some Sections on a *claims-made and notified* basis. This means that those Sections of this Policy only cover claims first made against you during the period this Policy is in force and notified to the Insurer as soon as practicable in writing while the Policy is in force or during an applicable Discovery Period. This Policy may not provide cover for any claims made against you if at any time prior to the commencement of this Policy you became aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that where you gave notice in writing to the Insurer of facts that might give rise to a claim against you as soon as was reasonably practicable after you became aware of those facts while this Policy is in force, the Insurer cannot refuse to pay a claim which arises out of those facts, when made, because it was made after the expiry of the Policy.

This Policy excludes prior claims and circumstances as outlined in the '*General Policy Exclusions – Prior Insurable Events*' provision.

### Your Duty of Disclosure

Before you enter into a contract of insurance with the insurer, you have a duty, under the *Insurance Contracts Act 1984* (Cth), to disclose to the Insurer every matter that you know, or could reasonably be expected to know, is relevant to the Insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the Insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require you to disclose a matter:

- (i) that diminishes the risk to be undertaken by the Insurer;
- (ii) that is of common knowledge;
- (iii) that the Insurer knows or in the ordinary course of the Insurer's business as an insurer ought to know; or
- (iv) as to which compliance with your duty is waived by the Insurer.

### Non-disclosure

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If you fail to comply with your duty of disclosure the Insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the Insurer may also have the option of avoiding the contract from its beginning.



## Privacy

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This notice sets out how we collect, use and disclose personal information about:

- you, if an individual; and
- other individuals you provide information about.

Further information about our Privacy Policy is available at [www.aig.com.au](http://www.aig.com.au) or by contacting us by email at [australia.privacy.manager@aig.com](mailto:australia.privacy.manager@aig.com) or by phone on 1300 030 886.

### How we collect your personal information

We usually collect personal information from you or your agents.

We may also collect personal information from:

- our agents and service providers;
- other insurers;
- people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners;
- third parties who may be arranging insurance cover for a group that you are a part of;
- providers of marketing lists and industry databases; and
- publicly available sources.

### Why we collect your personal information

We collect information necessary to:

- underwrite and administer your insurance cover;
- maintain and improve customer service; and
- advise you of our and other products and services that may interest you.

### To whom do we disclose your personal information

In the course of underwriting and administering this Policy we may disclose your information to:

- entities to which we are related, reinsurers, contractors or third party providers providing services related to the administration of this Policy;
- banks and financial institutions for Policy payments;
- assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim under the Policy;
- other entities to enable them to offer their products or services to you; and
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

We are likely to disclose information to some of these entities located overseas, including in the following countries: United States of America, United Kingdom, Singapore, Malaysia, the Philippines, India, Hong Kong, New Zealand as well as any country in which you have a claim and such other countries as may be notified in our Privacy Policy from time to time.

You may request not to receive direct marketing communications from us.



## Access to your personal information

Our Privacy Policy contains information about how you may access and seek correction of personal information we hold about you. In summary, you may gain access to your personal information by submitting a written request to us.

In some circumstances permitted under the Privacy Act 1988, we may not permit access to your personal information. Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

## Complaints

Our Privacy Policy also contains information about how you may complain about a breach of the applicable privacy principles and how we will deal with such a complaint.

## Consent

If applicable, your application includes a consent that you and any other individuals you provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

## Dispute Resolution Process

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We are committed to handling any complaints about our products or services efficiently and fairly.

If you have a complaint:

- (i) contact your insurance intermediary and they may raise it with us;
- (ii) if your complaint is not satisfactorily resolved you may request that your matter be reviewed by management by writing to:  
  
The Compliance Manager  
AIG  
Level 12, 717 Bourke Street  
Docklands Vic 3008
- (iii) if you are still unhappy, you may request that the matter be reviewed by the Insurer's Internal Dispute Resolution Committee. We will respond to you with the Committee's findings within 15 business days.
- (iv) if you are not satisfied with the finding of the Committee, you may be able to take your matter to the insurance industry's independent dispute resolution body. This external dispute resolution body can make decisions with which we are obliged to comply.

## General Insurance Code of Practice

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We are a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.



## Policy Schedule

### Investment Management Insurance

Policy Number: >

<b>1. Policyholder</b>			
	Address Line 1		
	Address Line 2		
	State	Postcode	
<b>2. Policy Period</b>			
	From:	To:	
	4:00pm at the <b>Policyholder's</b> main address	4:00pm at the <b>Policyholder's</b> main address	
<b>3. Limit of Liability (Aggregate)</b>			
	\$		
<b>4. Lifeboat Protection</b>			
	<b>Excess Limit:</b>		
	(The total of all payments to the <b>Policyholder's</b> Directors under Extension 2.2.4 will not exceed the Section <b>Limit of Liability</b> specified for Management Liability in Item 3 of the Schedule.)		
		\$	Per <b>Policyholder</b> Director

Sections, Covers and Extensions are not included in this Policy Wording unless they are specified in this Schedule to be included

<b>5. Covers and Extensions</b>	<b>Professional Civil Liability</b>	<b>Included</b>	<b>Limit of Liability (Aggregate)</b>	<b>Retention</b>
<b>Covers</b>				
	Investment Manager Professional Civil Liability	Yes	<b>Limit of Liability</b>	
	Fund Professional Civil Liability	Yes	<b>Limit of Liability</b>	
	Investigation Costs	Yes	<b>Limit of Liability</b>	
<b>Extensions</b>				
	Data Protection and Privacy Liability	Yes	\$100,000	Section Retention
	Loss Of Documents	Yes	<b>Limit of Liability</b>	Nil
	Pre-Claim Inquiry	Yes	\$100,000	Section Retention
	Employee Dishonesty	Yes		
	Regulatory Crisis Responses	Yes	<b>Limit of Liability</b>	Section Retention



5. Covers and Extensions (continued)	Management Liability	Included	Limit of Liability (Aggregate)	Retention
<b>Covers</b>				
	Investment Manager Management Liability	Yes	<b>Limit of Liability</b>	
	Fund Management Liability	Yes	<b>Limit of Liability</b>	
	Investigation Costs	Yes	<b>Limit of Liability</b>	
	Outside Entity Director	Yes	<b>Limit of Liability</b>	
	Company Securities	No		
	<b>Extensions</b>	<b>Included</b>	<b>Sub-limit of Liability (Aggregate)</b>	<b>Retention</b>
	Investment Managers Insurance Advisory Panel Advice	Yes	Refer to Extension	Not Applicable
	Crisis Containment	Yes	\$100,000	Nil
	Extradition Proceedings	Yes	\$50,000	Section Retention
	Lifeboat Protection	Yes	Refer to item 4	
	Lifetime Run-off for Retired Insured Persons	Yes		
	Pre-Claim Inquiry	Yes	\$100,000	Section Retention
	Derivative Demand	Yes	\$100,000	Section Retention
	Insolvency Hearing Cover	Yes	<b>Limit of Liability</b>	Section Retention
	Occupational Health & Safety	Yes	<b>Limit of Liability</b>	Section Retention
	Circumstance/Claim Mitigation	Yes	\$100,000	Section Retention
	Fines and Penalties	Yes	<b>Limit of Liability</b>	Section Retention
	Regulatory Crisis Response	Yes	\$250,000	Section Retention
	<b>Crime Protection</b>	<b>Included</b>	<b>Limit of Liability (Aggregate)</b>	<b>Retention</b>
<b>Covers</b>				
	Investment Manager and Fund Crime Protection	Yes	<b>Limit of Liability</b>	
	<b>Extensions</b>	<b>Included</b>	<b>Sub-limit of Liability (Aggregate)</b>	<b>Retention</b>
	Kidnap Response	Yes	\$100,000	Nil
	Loss Establishment Costs	Yes	\$1,000,000 or 10% of the <b>Limit of Liability</b> (whichever is the lesser)	Nil
	Lost Instrument Bond	Yes	<b>Limit of Liability</b>	Section Retention
	Repair of Computer Programs	Yes	\$1,000,000 or the <b>Limit of Liability</b> (whichever is the lesser)	Nil
	Interest	Yes	25% of the <b>Limit of Liability</b>	Section Retention
	Social Engineering and Impersonation Fraud Protection:	Yes		
	General Provision 3.4.5(i)(a)	Yes	\$[INSERT]	[INSERT]
	General Provision 3.4.5(i)(b)	Yes	\$[INSERT]	[INSERT]
	General Provision 3.4.5(ii)	Yes	\$[INSERT]	[INSERT]
	General Provision 3.4.5(iii)	Yes	\$[INSERT]	[INSERT]



General Terms and Conditions	Included	Sub-limit of Liability (Aggregate)	Retention
Automatic Funds and Subsidiaries	Yes		
Discovery Period	Yes		
Emergency Costs	Yes	20% of the <b>Limit of Liability</b> for the applicable section	Section Retention
Backdated Continuity	No		
Public Relations Expenses	Yes	\$ or the <b>Limit of Liability</b> (whichever is the lesser)	Section Retention
Asset and Liberty Costs	Yes	\$ or the <b>Limit of Liability</b> (whichever is the lesser)	Section Retention
Court Attendance	Yes	the specified <b>Per Diem</b>	Nil
<b>6. Continuity Date</b>			
<b>7. Premium</b>	As Agreed	Including statutory taxes and charges	
<b>8. Insurer</b>	AIG Australia Limited	ABN 93 004 727 753 AFSL 381686	
<b>9. Claim Notices</b>	Financial Lines Claims Manager AIG, Level 19, Citigroup Centre 2 Park Street, Sydney, NSW, 2000, Australia	Telephone: +61 2 9240 1711 Facsimile: +61 2 9240 1722 <a href="mailto:finclaims@aig.com">finclaims@aig.com</a>	
<b>10. Crisis Notices</b>	Financial Lines Claims Manager AIG, Level 19, Citigroup Centre 2 Park Street, Sydney, NSW, 2000, Australia	<a href="mailto:finclaims@aig.com">finclaims@aig.com</a>	
<b>11. Previous Policy</b>			
<b>12. Endorsements</b>	<u>Reference &amp; Description</u>		
	1.		
	2.		
	3.		
	4.		
	5.		
	6.		

**Signed for and on behalf of the Insurer**

Signature:

\_\_\_\_\_

Date of Policy Issuance:

\_\_\_\_\_





In consideration of the payment of, or agreement to pay, the premium the **Insurer** and the first named **Policyholder** agree as follows.

## Professional Civil Liability Section

### 1.1 Covers

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#### 1.1.1 Investment Manager Professional Civil Liability

The **Insurer** shall:

- (i) pay the **Loss** for, or on behalf of, any **Insured Person** of an **Insured Entity**;
- (ii) pay the **Loss** for, or on behalf of, any **Insured Entity**,

which arises out of a **Claim** first made against an **Insured Person** or **Insured Entity** during the **Policy Period** for a **Wrongful Professional Act**.

#### 1.1.2 Fund Professional Civil Liability

The **Insurer** shall:

- (i) pay the **Loss** for, or on behalf of, any **Insured Person** of a **Fund**;
- (ii) pay the **Loss** for, or on behalf of, any **Fund**,

which arises out of a **Claim** first made against an **Insured Person** or **Fund** during the **Policy Period** for a **Wrongful Professional Act**.

#### 1.1.3 Investigation Costs

The **Insurer** shall pay the **Investigation Costs** for, or on behalf of, any **Insured Person** arising from an **Investigation** arising out of the performance of or failure to perform **Investment Advisory Services**.

### 1.2 Extensions

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#### 1.2.1 Data Protection and Privacy Liability

Exclusion 1.3.6 ('Privacy/Patent/Trade Secret') shall not apply to **Loss** payable for any **Claim** for a **Data Protection Breach**.

#### 1.2.2 Loss of Documents

The **Insurer** will pay the **Loss** of an **Insured** for any **Claim** for any unintentional destruction, damage to, loss, deletion or erasure of **Documents** in the performance of or failure to perform **Investment Advisory Services**, and while the **Documents** are in the custody of the **Insured** and for which the **Insured** is legally liable. No **Retention** applies to this Extension.

#### 1.2.3 Pre-Claim Inquiry

The **Insurer** shall pay the **Pre-Claim Inquiry Costs** for or on behalf of any **Insured** in connection with a **Pre-Claim Inquiry** arising out of the performance of or failure to perform **Investment Advisory Services**.

#### 1.2.4 Employee Dishonesty

Exclusion 1.3.3 ('Established Misdeeds') shall not apply to **Loss** which arises out of a **Claim** for a **Wrongful Professional Act** alleging fraudulent or dishonest conduct of an **Employee** or any other person for whom an **Insured Entity** or **Fund** is legally liable, provided such conduct:

- (i) is not condoned, expressly or implicitly by ; and
- (ii) results in legal liability to,

the **Insured Entity** or **Fund**.

No cover is available under this Extension to the actual perpetrator



### 1.2.5 Regulatory Crisis Response

**Defence Costs** and **Investigation Costs** shall also include the reasonable fees, costs and expenses incurred by, or on behalf of, any **Insured Person** in retaining legal advisers for the principal purpose of responding to a **Critical Regulatory Event** arising out of the performance of or failure to perform **Investment Advisory Services**.

## 1.3 Exclusions

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The **Insurer** shall not be liable to make any payment under this Professional Civil Liability Section:

### 1.3.1 Bodily Injury and Property Damage

arising out of, based upon or attributable to bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment or loss of use of any property. This Exclusion does not apply to Extension 1.2.2 ('Loss of Documents') or to any **Claim** for defamation or injurious falsehood.

### 1.3.2 Assumed Liability

arising out of, based upon or attributable to any **Wrongful Professional Act** which gives rise to a liability to a third party assumed or accepted by an **Insured** under any contract or agreement (including a guarantee or warranty) except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement.

### 1.3.3 Established Misdeeds

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which an **Insured** was not legally entitled; or
- (ii) conduct involving a wilful breach of duty by any **Insured**; or
- (iii) any criminal, dishonest, fraudulent or malicious acts or omissions of an **Insured**,

in the event that any of the above is established by a written admission by an **Insured** that has not been withdrawn, or judgment, award or other finding by a court, tribunal or arbitrator with jurisdiction to finally determine the matter (including the outcome of any appeal in relation to such judgment, award or other finding).

The **Insurer** may not refuse to advance costs and expenses payable under this Policy by reason only that the **Insurer** considers that conduct specified in this Exclusion has occurred, until such time as one of the conditions to this Exclusion is satisfied.

### 1.3.4 Insured v Insured

arising out of, based upon or attributable to a **Claim** brought by or on behalf of any **Insured**, or successors or assigns of any **Insured**, unless such **Claim** is brought by or on behalf of:

- (i) an **Employee** as a customer or client of an **Insured Entity** and is not solicited by or brought with the voluntary (rather than legally required) intervention, assistance or participation of any **Insured** against whom it is brought; or
- (ii) a **Fund**, where the failure to bring or maintain such **Claim** would be a breach of a fiduciary duty owed by such **Fund** to investors in such **Fund**.

### 1.3.5 Pollution

arising out of, based upon or attributable to or in any way involving, directly or indirectly **Pollutants**.

### 1.3.6 Privacy/Patent/Trade Secret

for any breach of a right to privacy, infringement of a patent or misappropriation of a trade secret.



### 1.3.7 Proprietary Risk

arising out of, based upon or attributable to a proprietary trading loss, financial loss or a business loss where an **Insured Entity** or **Fund** is acting on its own behalf or as principal.

### 1.3.8 Shareholder

arising out of, based upon or attributable to any **Claim** brought by, in the right of or on behalf of any shareholder of an **Insured Entity** or **Fund** unless brought as a customer or client of an **Insured Entity** or investor in a **Fund**.

### 1.3.9 Trustees

arising out of, based upon or attributable to any **Wrongful Professional Act** by an **Insured Person** as a trustee, fiduciary or administrator of any **Plan**.

## 1.4 General Provisions

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### 1.4.1 Advance Payment

Except to the extent that the **Insurer** has denied indemnity, the **Insurer** shall advance **Defence Costs** and **Investigation Costs**, within twenty (20) business days after sufficiently detailed invoices for those costs are received and accepted by the **Insurer**. The **Insurer** may not refuse to advance **Defence Costs** and **Investigation Costs** by reason only that the **Insurer** considers that conduct specified in Exclusion 1.3.3 ('Established Misdeeds') has occurred, until such time as one of the conditions to that Exclusion is satisfied.

### 1.4.2 Continuity

If the **Insured** could and should have notified any claim, or circumstance which might give rise to a claim, under any prior policy of which this Policy is a renewal or replacement issued by the **Insurer**, the **Insurer** shall accept such a notification under the prior policy provided it was the issuer of the prior policy as required under Section 54 of the *Insurance Contracts Act 1984* (Cth).

### 1.4.3 Related Claims, Investigations or Matters

All **Claims**, **Investigations**, matters covered under Section 1.2 ('Extensions') or by endorsement to this Policy resulting from (i) the same cause, or (ii) a single **Wrongful Professional Act**, or (iii) a series of continuous, repeated or related **Wrongful Professional Acts**, or (iv) the fraud or dishonesty of any one person or in which such person is concerned or implicated, shall be considered a single related event for this Section 1 ('Professional Civil Liability') of the Policy.



## Management Liability Section

### 2.1 Covers

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#### 2.1.1 Investment Manager Management Liability

The **Insurer** shall:

- (i) pay the **Loss** for, or on behalf of, any **Insured Person** of an **Insured Entity**;
- (ii) pay the **Loss** for, or on behalf of, any **Insured Entity**,

which arises out of a **Claim** first made against an **Insured Person** during the **Policy Period** for a **Wrongful Managerial Act**.

#### 2.1.2 Fund Management Liability

The **Insurer** shall:

- (i) pay the **Loss** for, or on behalf of, any **Insured Person** of a **Fund**;
- (ii) pay the **Loss** for, or on behalf of, any **Fund**,

which arises out of a **Claim** first made against an **Insured Person** during the **Policy Period** for a **Wrongful Managerial Act**.

#### 2.1.3 Investigation Costs

The **Insurer** shall pay the **Investigation Costs** for, or on behalf, of any **Insured Person** arising from an **Investigation** commenced during the **Policy Period**.

#### 2.1.4 Outside Entity Directors

The **Insurer** shall pay the **Loss** and the **Investigation Costs** for, or on behalf of, any **Outside Entity Director** for any: (a) **Outside Entity Liability**; or (b) **Investigation** commenced during the **Policy Period**.

#### 2.1.5 Company Securities

The **Insurer** shall pay the **Loss** for, or on behalf of, any **Insured Entity** or **Fund** which arises out of a **Securities Claim** against such **Insured Entity** or **Fund** during the **Policy Period**.

### 2.2 Extensions

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#### 2.2.1 Investment Manager Insurance Advisory Panel Advice

The **Insurer** has arranged for the Investment Manager Insurance Advisory Panel to provide at no extra charge confidential Australian legal advice of up to one hour per enquiry deriving from the same or related facts to any **Insured Person** during the **Policy Period** with respect to matters which are relevant to the cover provided under this Section.

#### 2.2.2 Crisis Containment

The **Insurer** shall pay the reasonable fees, costs and expenses for external crisis management services provided to an **Insured** within 30 days of a **Crisis** which occurs during the **Policy Period**. No **Retention** shall apply to this Extension.



### 2.2.3 Extradition Proceedings

The **Insurer** shall pay for, or on behalf of, any **Insured** the reasonable fees, costs and expenses:

- (i) arising from any extradition proceeding of an **Insured Person** or **Outside Entity Director**; and
- (ii) in an appeal against an extradition proceeding of an **Insured Person** or **Outside Entity Director**, including any judicial review applications challenging the designation of any territory for the purposes of any extradition law, any challenge or appeal of any extradition decision by the responsible governmental authority, and any applications to the European Court of Human Rights or similar court; and
- (iii) of an accredited counsellor or tax advisor retained by any **Insured Person** or **Outside Entity Director** and approved by the **Insurer**, in extradition proceedings brought against such **Insured Person** or **Outside Entity Director**; and
- (iv) of **Public Relations Consultants** to provide **Public Relations Services** to an **Insured Person** or **Outside Entity Director** during extradition proceedings of a **Insured Person** or **Outside Entity Director**.

### 2.2.4 Lifeboat Protection

The **Insurer** will pay a separate **Excess Limit** on behalf of each of the **Policyholder's Directors** for any **Loss** arising from a **Claim** for a **Wrongful Managerial Act** that is otherwise covered under this section of the Policy. This Extension shall apply only to Section 2.1.1 ('Investment Manager Management Liability') and Section 2.1.2 ('Fund Management Liability').

The total of all payments to the **Policyholder's Directors** under this Extension 2.2.4 shall not exceed the **Limit of Liability**.

### 2.2.5 Lifetime Run-off for Retired Insured Persons

This Section shall not expire for any **Insured Person** who voluntarily departs prior to the end of the **Policy Period**:

- (i) with respect to a **Wrongful Managerial Act** occurring prior to their resignation or departure; or
- (ii) in the case of an **Investigation**, extradition proceedings or **Asset & Liberty Proceedings**, with respect to matters occurring prior to their resignation or departure.

This Extension will not apply if this Policy is renewed or replaced with another Directors' & Officers' insurance policy, or with respect to any **Insured Person** that resigns, is involuntarily terminated or departs due to or after a **Transaction**.

### 2.2.6 Pre-Claim Inquiry

The **Insurer** shall pay the **Pre-Claim Inquiry Costs** for or on behalf of any **Insured** in connection with a **Pre-Claim Inquiry**.



#### 2.2.7 Derivative Demand

The **Insurer** shall pay the **Derivative Investigation Hearing Costs** for, or on behalf of, any **Insured** for any:

- (i) **Derivative Suit**; or
- (ii) **Derivative Demand**.

#### 2.2.8 Insolvency Hearing Cover

The **Insurer** shall pay the **Insolvency Hearing Costs** for, or on behalf, of any **Insured**.

#### 2.2.9 Occupational Health & Safety

The **Insurer** shall pay the **Loss** for, or on behalf of, any **Insured Person** for any **Wrongful Managerial Act** arising from an **Occupational Health & Safety Incident**.

#### 2.2.10 Circumstance/Claim Mitigation

The **Insurer** shall pay the **Mitigation Costs**, **Professional Fees** and **Prosecution Costs** incurred by an **Insured**, with the **Insurer's** prior written consent, to minimise the risk of a **Claim** against an **Insured Person** or **Outside Entity Director** provided that each of the following are met:

- (i) notification of the relevant circumstances has been made to the **Insurer** in accordance with the notification provisions of this Policy; and
- (ii) it is reasonable to expect that if the circumstances notified in accordance with (i) above were to give rise to a **Claim**, it would result in a **Wrongful Managerial Act** or **Outside Entity Liability** that would be covered under this Section, but no such **Claim** has yet been made by the potential plaintiff; and
- (iii) the **Mitigation Costs** are reasonably and necessarily incurred by the **Insured Person** or **Outside Entity Director** and the **Mitigation Costs** are paid directly or indirectly to each potential plaintiff for the principal purpose of avoiding a **Claim** being made by that potential plaintiff for a **Wrongful Managerial Act**; and
- (iv) the **Professional Fees** are reasonably and necessarily incurred by the **Insured Person** or **Outside Entity Director** to negotiate and facilitate the payment of **Mitigation Costs**; and
- (v) the **Prosecution Costs** are reasonably and necessarily incurred by the **Insured Person** or **Outside Entity Director** for the principal purpose of avoiding a **Claim** being made by that potential plaintiff for a **Wrongful Managerial Act**.

The liability of the **Insurer** under this Extension shall not exceed the liability that would have existed under this Section if the **Claim** had been made against the **Insured Person** or **Outside Entity Director** by the potential plaintiff.

#### 2.2.11 Fines & Penalties

The **Insurer** shall pay the **Fines & Penalties** for, or on behalf of, any **Insured Person** for any **Wrongful Managerial Act**, or **Outside Entity Director** for any **Outside Entity Liability**.

#### 2.2.12 Regulatory Crisis Response

**Defence Costs** and **Investigation Costs** shall also include the reasonable fees, costs and expenses incurred by, or on behalf of, any **Insured Person** in retaining legal advisers for the principal purpose of responding to a **Critical Regulatory Event**.



## 2.3 Exclusions

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The **Insurer** shall not be liable to make any payment under this Management Liability Section:

### 2.3.1 Bodily Injury and Property Damage

for bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment or loss of use of any property. This exclusion does not apply to:

- (i) any **Claim** for emotional distress with respect to an **Employment Practice Breach**; or
- (ii) Extension 2.2.9. ('Occupational Health & Safety').

### 2.3.2 Established Misdeeds

for:

- (i) any legal proceeding brought against an **Insured Person** arising out of, based upon or attributable to:
  - (a) any conduct or contravention by such **Insured Person** in respect of which a liability is the subject of a prohibition in Section 199B(1) of the *Corporations Act 2001* (Cth); or
  - (b) the committing of any wilful breach, deliberately dishonest or fraudulent **Wrongful Managerial Act** by such **Insured Person**; or
- (ii) any legal proceeding brought against any **Outside Entity Director** arising out of, based upon or attributable to:
  - (a) any conduct or contravention by such **Outside Entity Director** in respect of which a liability is the subject of a prohibition in Section 199B(1) of the *Corporations Act 2001* (Cth); or
  - (b) the committing of any wilful breach, deliberately dishonest or fraudulent **Wrongful Managerial Act** by such **Outside Entity Director**; or
- (iii) any legal proceeding brought against any **Insured** arising out of, based upon or attributable to:
  - (a) the gaining of profit or advantage to which the **Insured** was not legally entitled; or
  - (b) the committing of any wilful breach, deliberately dishonest or fraudulent **Wrongful Managerial Act**,

in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal (after exhaustion of any rights of appeal) or any formal written admission by the respective **Insured**.

For the purposes of determining the applicability of this Exclusion, the conduct of any **Insured** shall not be imputed to any other **Insured Person** or **Outside Entity Director**.

The **Insurer** shall not institute any legal proceeding (other than a cross claim or similar) with the primary purpose of obtaining a decisions to enforce this Exclusion.

The **Insurer** may not refuse to advance costs and expenses payable under this Policy by reason only that the **Insurer** considers that conduct specified in this Exclusion has occurred, until such time as the condition to this Exclusion is satisfied.

### 2.3.3 Professional Financial Services

arising out of, based upon or attributable to the performance of or failure to perform professional services (including **Investment Advisory Services**) or related back-office supporting services, or any act, error, or omission relating thereto.

However, this exclusion shall not apply to any **Claim** alleging that an **Insured Person** has failed to supervise an **Employee**.



## 2.4 General Provisions

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### 2.4.1 Advance Payment

Except to the extent that the **Insurer** has denied indemnity, the **Insurer** shall advance **Defence Costs, Investigation Costs**, and all other costs and expenses payable under this or Section 2 ('Management Liability Section'), within twenty (20) business days after sufficiently detailed invoices for those costs are received and accepted by the **Insurer**. The **Insurer** may not refuse to advance **Defence Costs** and **Investigation Costs** by reason only that the **Insurer** considers that conduct specified in Exclusion 2.3.2 ('Established Misdeeds') has occurred, until such time as the condition to that Exclusion is satisfied.

### 2.4.2 Continuity

If the **Insured** could and should have notified any claim, or circumstance which might give rise to a claim, under any prior policy of which this Policy is a renewal or replacement issued by the **Insurer**, the **Insurer** shall accept such a notification under the prior policy provided it was the issuer of the prior policy as required under Section 54 of the *Insurance Contracts Act 1984* (Cth).

### 2.4.3 Non-Avoidance

If the **Insurer** has a right to reduce its liability under the *Insurance Contracts Act 1984* (Cth) for any fraudulent misrepresentation or fraudulent non-disclosure of a matter or fact established by final adjudication of a judicial or arbitral tribunal, or any formal written admission by any **Insured Person**, the **Insurer** shall not exercise such right against any **Insured** other than the **Insured** in respect of whom the fraudulent misrepresentation or fraudulent non-disclosure has been so established.

This Policy is not avoidable or rescindable in whole or in part with respect to cover for any:

- (i) **Claim** brought against an **Outside Entity Director** or **Investigation** into the affairs of an **Outside Entity Director**; or
- (ii) **Claim** brought against an **Insured Person** or **Investigation** into the affairs of an **Insured Person**.

### 2.4.4 Severable Nature of the Policy

With respect to cover provided to any:

- (i) **Insured Person**; or
- (ii) **Outside Entity Director**;

this is a severable Policy covering their individual interest.

With respect to any breach of any Policy terms and conditions and the contents of any proposal form submitted, or statements, warranties and representations made to the **Insurer** in connection with this Policy, or any policy of which this Policy is a renewal or replacement, no statements made by or on behalf of, information or knowledge possessed by, or **Wrongful Managerial Act** of:

- (i) an **Outside Entity Director**; or
- (ii) an **Insured Person**,

shall be imputed to any other:

- (i) **Outside Entity Director**; or
- (ii) **Insured Person**,

for the purpose of coverage under this Policy.

With respect to any **Insured Entity** or **Fund**, only the statements and knowledge of any Chairman, Chief Executive Officer, Chief Financial Officer, Risk Manager, General Counsel or person occupying an equivalent position of any **Insured Entity** or **Fund**, or any person who signed the proposal form (or any other declaration) in connection with this Policy, or any policy of this Policy is a renewal or replacement, will be imputed to all **Insured Entities** or **Fund**.





#### 2.4.5 Related Claims, Investigations or Matters

All **Claims, Securities Claims, Investigations**, matters covered under Section 2.2 ('Extensions') or by endorsement to this Policy resulting from (i) the same cause, or (ii) a single **Wrongful Managerial Act**, or (iii) a series of continuous, repeated or related **Wrongful Managerial Acts**, or (iv) the fraud or dishonesty of any one person or in which such person is concerned or implicated, shall be considered a single related event for this Section 2 ('Management Liability') of the Policy.



## Crime Protection Section

### 3.1 Cover

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#### 3.1.1 Investment Manager and Fund Crime Protection

The **Insurer** shall reimburse any **Insured Entity** or any **Fund** for its **Direct Financial Loss Discovered** during the **Policy Period** and notified to the **Insurer** as soon as practicable during the **Policy Period** resulting directly from any:

- (i) **Act of Infidelity**; or
- (ii) **Third Party Crime**.

### 3.2 Extensions

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#### 3.2.1 Kidnap Response

In the event of a **Kidnapping, Hijacking** or **Wrongful Detention** of an **Insured Person** during the **Policy Period**, the **Insurer** will pay for **Kidnap Response Costs** incurred through the **Response Consultants** after they have been contacted on the telephone number specified in Appendix IV ('NYA International - Response Consultants Services').

#### 3.2.2 Loss Establishment Costs

The **Insurer** shall pay, in addition to the **Limit of Liability**, the reasonable fees and expenses of a **Fraud Investigator** retained by the **Insured Entity** or **Fund** to investigate, prove and report a **Direct Financial Loss** under Section 3.1.1 ('Investment Manager and Fund Crime Protection'). No further **Retention** amount shall be applied to expenses incurred or fees paid under this Extension other than that **Retention** amount applicable to such original payment.

#### 3.2.3 Lost Instrument Bond

The **Insurer** shall indemnify the **Insured** for such sum that the **Insured** is required to pay under any indemnity given by the **Insured** to an issuer of a Lost Instrument Bond obtained with the **Insurer's** prior consent, to secure the issuance of duplicates of **Negotiable Instruments**, the loss of which is covered by this policy.

#### 3.2.4 Repair of Computer Programs

The **Insurer** shall reimburse any **Insured Entity** or **Fund** for reasonable expenses incurred or reasonable fees paid by an **Insured Entity** or **Fund** with the prior written approval of the **Insurer**, for the verification or reconstitution or removal of electronic computer programs which have been fraudulently or maliciously prepared, modified or deleted to commit an **Act of Infidelity** or **Third Party Crime** paid by the **Insurer** under Cover 3.1.1 ('Investment Manager and Fund Crime Protection'). No further **Retention** amount shall be applied to expenses incurred or fees paid under this Extension other than that **Retention** amount applicable to such original payment.

#### 3.2.5 Interest

"**Direct Financial Loss**" shall include interest which is not received or becomes payable by an **Insured Entity** or **Plan** or **Fund** as a direct result of an **Act of Infidelity** or **Third Party Crime**. Such interest shall be calculated by applying the average of the Reserve Bank of Australia Official Cash Rate in force between the time such interest would have been received or becomes payable and the date of its **Discovery**.

#### 3.2.6 Social Engineering and Impersonation Fraud Protection

The **Insurer** shall pay the **Insured Entity** or **Fund** for **Direct Financial Loss** resulting from **Social Engineering and Impersonation Fraud**.



### 3.3 Exclusions

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The **Insurer** shall not be liable to make any payment under this Crime Protection Section for:

#### 3.3.1 Authorised Access

**Direct Financial Loss** resulting from the input of electronic data at an authorised electronic terminal by a customer, or another person who had authorised access to the customer's authentication mechanism, unless:

- (i) such customer was accessing an **Insured Entity's** or **Fund's Computer System** for a purpose not pre-agreed by the **Insured Entity** or **Fund** and such act was committed with the intent to cause the **Insured Entity** or **Fund** to sustain a **Direct Financial Loss**; or
- (ii) such **Direct Financial Loss** is covered under part (i) of Cover 3.1.1 ('Investment Manager and Fund Crime Protection').

#### 3.3.2 Credit Risks

**Direct Financial Loss** resulting from the complete or partial non-payment of or default upon any **Loan**, unless such **Direct Financial Loss** results directly from an **Act of Infidelity**, a **Fraudulent Transaction** or a **Computer Fraud**.

#### 3.3.3 Directors Infidelity

**Direct Financial Loss** resulting from any dishonest, fraudulent or malicious act of any **Director or Officer** or partner of an **Insured Entity** or **Fund**, except to the extent that the **Director or Officer** is deemed to be an **Employee** under part (ii) of Definition 4.3.35 ('Employee').

#### 3.3.4 Employee Infidelity

**Direct Financial Loss** resulting from any dishonest, fraudulent or malicious act of any **Employee** unless such **Direct Financial Loss** is covered under part (i) of Cover 3.1.1 ('Investment Manager and Fund Crime Protection').

#### 3.3.5 Extortion/Kidnap

**Direct Financial Loss** due to or payment for extortion, kidnapping, hijacking or wrongful detention except to the extent such sums are covered under Extension 3.2.1 ('Kidnap Response').

#### 3.3.6 Kidnap Response Limitations

any payment under Extension 3.2.1 ('Kidnap Response') resulting directly or indirectly from:

- (i) fraudulent, dishonest or criminal acts of an **Insured** or any person authorised by an **Insured** to have custody of ransom monies; or
- (ii) **Kidnapping, Hijacking, or Wrongful Detention** of an **Insured Person**:
  - (a) who has had other kidnap insurance cancelled or declined;
  - (b) who has been **Kidnapped** previously; or
  - (c) within his country of residence; or
- (iii) **Wrongful Detention** in connection with or as a result of:
  - (a) any actual or alleged violation by the detained **Insured Person** of the laws of the country in which he is detained, or failure to maintain and possess duly authorised and issued required documents and visas, unless the **Insurer** determines such allegations to be intentionally false, fraudulent or malicious and made solely to achieve a political, propaganda, or coercive effect upon or at the expense of an **Insured Entity, Fund or Insured Person**;
  - (b) failure of the detained **Insured Person** to evacuate from the country in which he is detained within ten (10) days after issuance of advice by the government of the **Insured Person's** domicile or residence or travel to that country contrary to advice from that government; or



- (c) active membership by the detained **Insured Person** of any governmental organisation, official law enforcement, or military force.

### 3.3.7 Legal Fees Costs and Expenses

costs, fees or other expenses incurred in establishing the existence or amount of **Direct Financial Loss** (except to the extent such sums are covered under Extension 3.2.2 ('Loss Establishment Costs')) or in prosecuting any proceeding.

### 3.3.8 Fraudulent Features in Computer Programs

**Direct Financial Loss** resulting from fraudulent features contained in computer programs developed for sale to, or that were sold to, multiple customers at the time of their acquisition from a vendor or consultant unless:

- (i) no other purchaser of the computer programs has sustained an insurable loss resulting from such fraudulent features during the period of 60 days from the date of **Discovery** of the **Direct Financial Loss** by an **Insured Entity** or **Fund**;
- (ii) at the time of **Direct Financial Loss** such fraudulent features were contained solely on the computer programs of an **Insured Entity** or **Fund** and not on those sold to any other customer; or
- (iii) such fraudulent features were inserted subsequent to the date of their acquisition.

### 3.3.9 Indirect Loss

- (i) indirect or consequential loss of any nature;
- (ii) any sum representing loss or deprivation of income or profits (including but not limited to interest and dividends), except for Extension 3.2.5 ('Interest');
- (iii) any sum arising out of, based upon or attributable to:
  - (a) business interruption (including loss of computer time or use);
  - (b) mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data corruption, failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
  - (c) loss of or damage to any property whatsoever by reason of wear, tear, gradual deterioration, moth or vermin.

### 3.3.10 Property Damage

any sum attributable to loss, damage or destruction:

- (i) of or to any office, premises or real estate, however caused;
- (ii) of or to any property as a result of fire, explosion, implosion or collapse, other than loss of **Property** due to a malicious act of an **Employee**;
- (iii) as a result of looting, or any act of God or nature, including hurricane, typhoon, earthquake, or subterranean fire; or
- (iv) arising out of, based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 3.3.11 Property in the Mail

any sum attributable to loss of **Property** while in the custody of any postal service, other than **Property** sent via registered mail, recorded delivery or courier.



### 3.3.12 Proprietary Information, Trade Secrets and Intellectual Property

**Direct Financial Loss** or the actual or alleged plagiarism of, or arising directly or indirectly from the accessing of, any confidential information (including but not limited to trade secrets, computer programs, customer information, patents, trademarks, trade names or copyrights), except to the extent that any such confidential information is used to support or facilitate the commission of an **Act of Infidelity** or **Third Party Crime** covered by this policy.

### 3.3.13 Source Documentation – Secondary Input

any **Direct Financial Loss** resulting directly or indirectly from fictitious, forged, fraudulently altered, counterfeit or fraudulent documents, written or printed instruments or instructions, negotiable instruments or certificated securities in physical form used as source documentation in the creation, preparation or modification of electronic data or **Electronic Communications**.

### 3.3.14 Physical Documentation – Providing hard copy documents

any **Direct Financial Loss** resulting directly or indirectly from the **Insured** (or a **Financial Organisation** acting on behalf of the **Insured**) having acted or relied upon documents, written or printed instruments or instructions negotiable instruments or certificated securities provided in physical form by a third party to the **Insured** (or to a **Financial Organisation** acting on behalf of the **Insured**).

### 3.3.15 Statements of Condition – Provision of Electronic Information

Any **Direct Financial Loss** resulting directly or indirectly from the **Insured** (or a **Financial Organisation** acting on behalf of the **Insured**) having acted or relied upon electronic data (including electronic data contained in an third party originated **Electronic Communication**) provided to the **Insured** (or to a **Financial Organisation** acting on behalf of the **Insured**) which electronic data represents fictitious, dishonest or fraudulent:

- (i) financial accounts or financial records;
- (ii) statements of account;
- (iii) valuations of investments or real property; or
- (iv) other statements of condition intended to obtain or gain access to:
  - a. a **Loan** or guarantee;
  - b. actual or committed investment funds; or
  - c. the proceeds of insurance or assurance policies,

held by, or from, the **Insured**.

## 3.4 General Provisions

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### 3.4.1 Use of Fraud Investigator

The Fraud Investigator shall:

- (i) investigate the facts behind a **Direct Financial Loss**;
- (ii) determine the quantum of a **Direct Financial Loss**;
- (iii) advise when and how the **Insured Entity's** or **Fund's** controls were or may have been breached;
- (iv) summarise recommendations which may prevent future similar **Direct Financial Loss**; and
- (v) issue a report limited to the foregoing, in a format approved by the **Insurer**, in duplicate to the **Insured** and to the **Insurer**.

The **Insurer** has the right to attend the initial meeting between the **Insured Entity** or **Fund** and the **Fraud Investigator**.



### 3.4.2 Basis of Valuation

In determining the amount collectable under this policy for any **Direct Financial Loss**, deductions shall be made in respect of any property (including **Property**) received from any source whatsoever, including payments and receipt of principal, interest, dividends, commissions and the like, whenever received, in connection with any matter from which a **Direct Financial Loss** has arisen.

In no event shall the **Insurer** be liable for more than:

- (i) the actual market value, determined by that published in the Australian Financial Review in Australia or equivalent local daily financial newspaper, of **Negotiable Instruments**, foreign funds, currencies or precious metals at the close of business on the day the **Direct Financial Loss** was **Discovered**, or, if less, the actual cost of replacing the **Negotiable Instruments**;
- (ii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by an **Insured Entity** in order to reproduce books of accounts and records;
- (iii) the cost of blank media for the recording of electronic media and the cost of labour for the actual transcription or copying of electronic data furnished by the **Insured Entity**, in order to reproduce such electronic data, however, if such electronic data cannot be reproduced and represent **Negotiable Instruments** or other financial instruments of value, then the **Direct Financial Loss** will be valued as indicated in paragraphs (i) and (iv) of this general provision; or
- (iv) the actual cash value of other property at the time of **Direct Financial Loss** or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less.

### 3.4.3 Recoveries

Recoveries (except from insurance, reinsurance, sureties or indemnity) following a paid **Direct Financial Loss** under this policy, will be allocated in the following order of reimbursement:

- (i) first, for any costs and expenses reasonably and necessarily incurred in relation to the recovery;
- (ii) secondly, the **Insured Entity** will be reimbursed for any **Direct Financial Loss** in excess of the **Limit of Liability**;
- (iii) thirdly, the **Insurer** will be reimbursed for any settlement made for **Direct Financial Loss**, fees, costs and expenses paid under this policy; and
- (iv) lastly, the **Insured**.

### 3.4.4 Related Direct Financial Loss or Matters

All **Direct Financial Loss**, matters covered under Section 3.2 ('Extensions') or by endorsement to this Policy resulting from (i) the same cause, or (ii) a single **Act of Infidelity**, or (iii) a single **Third Party Crime**, or (iv) a series of related or continuous acts, omissions or events up to the time of **Discovery**; or (v) a series of continuous, repeated or related **Acts of Infidelity** or **Third Party Crimes** shall be considered a single related event for this Section 3 ('Crime Protection Section') of the Policy.

### 3.4.5 Social Engineering and Impersonation Fraud Protection

Cover under the "Social Engineering Protection and Impersonation Fraud Protection" Extension is subject to the following Sub Limits of Liability and **Retentions**:

- (i) where the relevant **Insured Entity** or **Fund** has a **Verification Policy**:
  - (a) if the **Insured Person** has followed the **Verification Policy** in respect of the subject of the **Direct Financial Loss** claimed, then in no event shall the **Insurer** be liable for more than the Sub Limit of Liability specified in the Schedule for General Provision 3.4.5(i)(a) and the **Insured** shall be liable to pay the **Retention** specified in the Schedule for General Provision 3.4.5(i)(a); or



- (b) if the **Insured Person** failed to follow the **Verification Policy** in respect of the **Direct Financial Loss** claimed, then in no event shall the **Insurer** be liable for more than the Sub Limit of Liability specified in the Schedule for General Provision 3.4.5(i)(b) and the **Insured** shall be liable to pay the **Retention** in the Schedule for General Provision 3.4.5(i)(b).
- (ii) where an **Insured Entity** or **Fund** does not have a **Verification Policy** but the **Insured Person** has followed a **Verification Process Policy** in respect of the subject of the **Direct Financial Loss** claimed, in no event shall the **Insurer** be liable for more than the Sub Limit of Liability specified in the Schedule for General Provision 3.4.5(ii) and the **Insured** shall be liable to pay the **Retention** specified in the Schedule for General Provision 3.4.5(ii).
- (iii) where an **Insured Entity** or **Fund** does not have a **Verification Policy** or the **Insured Person** has not followed a **Verification Process** in respect of the subject of the **Direct Financial Loss** claimed, in no event shall the **Insurer** be liable for more than the Sub Limit of Liability specified in the Schedule for General Provision 3.4.5(iii) and the **Insured** shall be liable to pay the **Retention** specified in the Schedule for General Provision 3.4.5(iii).



## General Terms and Conditions Section

### 4.1 Extensions

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#### 4.1.1 Automatic Funds and Subsidiaries

The definition of **Subsidiary** is extended to include all **Automatic Subsidiaries**; and the definition of **Fund** is extended to include all **Automatic Funds**.

#### 4.1.2 Discovery Period

If this Policy is not renewed, and the first named **Policyholder** does not obtain insurance of a similar nature to that which is provided by this Policy prior to expiry of the **Policy Period** the **Insured** shall be entitled to a 90 day **Discovery Period**.

If this Policy is not renewed, and the first named **Policyholder** advises in writing that it will purchase the **Discovery Period** and pays an amount equal to 100% of the **Premium** within 30 days of the expiry of the **Policy Period** to their insurance intermediary, this Policy will be extended for a further 12 months from the expiry of the **Policy Period**.

If the first named **Policyholder** does not elect to purchase the 12 month **Discovery Period**, then any **Insured Person** may elect to purchase the **Discovery Period** by advising in writing that he or she will purchase and making full payment of 100% of the **Premium** within 30 days of the expiry of the **Policy Period** to their insurance intermediary.

No **Discovery Period** is available if this policy is cancelled or avoided or in the event of a **Transaction** during the **Policy Period**. However, if a **Transaction** takes place, upon written request of the first named **Policyholder**, the **Insurer** may quote a **Discovery Period**. In considering such request, the **Insurer** shall be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations that the **Insurer** determines appropriate.

#### 4.1.3 Emergency Costs

Notwithstanding General Provision 4.4.10 ('Consent'), if the **Insurer's** written consent cannot be obtained within a reasonable time before incurring:

- (i) **Investigation Costs**, for any **Investigation**; or
- (ii) costs incurred with respect to Extension 4.1.6 ('Asset and Liberty Costs');
- (iii) costs incurred with respect to Extension 2.2.3 ('Extradition Proceedings'); or
- (iv) **Defence Costs** for any **Claim**,

then the **Insurer** shall allow retrospective approval for such costs up to twenty percent (20%) of the **Limit of Liability** of the applicable coverage Section.

#### 4.1.4 Backdated Continuity

Exclusion 4.2.1 ('Prior Insurable Event') shall not apply to the extent that the **Insured** could have notified any matter under a **Previous Policy** but innocently failed to do so, and:

- (i) the **Insured** has sought indemnity from the **Previous Insurer** for the matter; and
- (ii) the matter would have been covered under the **Previous Policy** and the **Previous Insurer** would have been liable to make payment in relation to the matter but for the innocent failure to notify the **Previous Insurer** while that policy was in force; and
- (iii) the **Previous Insurer** of such **Previous Policy** has denied indemnity in writing solely on the basis of failing to notify the **Previous Insurer** of the matter during the policy period of the **Previous Policy**.

The matter shall be dealt with in accordance with the terms of the **Previous Policy** but only to the extent that the terms of the **Previous Policy** afford no broader cover in respect of the matter than is provided by this Policy and the **Insurer** shall not pay any more than the **Previous Insurer** would have been liable to pay but for the innocent failure to notify.





#### 4.1.5 Public Relations Expenses

The **Insurer** shall pay for, or on behalf of, any **Insured** for any reasonable fees, costs and expenses of **Public Relations Consultants** to provide **Public Relations Services** to:

- (i) an **Insured Person** or **Outside Entity Director** in connection with a **Claim** or **Investigation**;  
or
- (ii) an **Insured Person** in connection with a **Critical Regulatory Event**.

#### 4.1.6 Asset and Liberty Costs

The **Insurer** shall pay for, or on behalf of, any **Insured** any:

- (i) **Bail Bond and Civil Bond Premium**;
- (ii) **Prosecution Costs**;
- (iii) **Personal Expenses** in the event of a **Confiscation Order**; and
- (iv) reasonable fees, costs and expenses incurred by, or on behalf of, any **Insured Person** or **Outside Entity Director** arising from any **Asset and Liberty Proceeding**.

#### 4.1.7 Court Attendance

The **Insurer** shall pay a **Per Diem** to any:

- (i) **Outside Entity Director**; or
- (ii) **Insured Person**,

for each day (or part thereof) on which their attendance in court is legally required in connection with any **Claim** or **Investigation** covered under this Policy.

## 4.2 Exclusions

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The **Insurer** shall not be liable to make any payment, under any Cover or Extension:

#### 4.2.1 Prior Insurable Events

in connection with any matter arising out of, based upon or attributable to:

- (i) (a) the same facts alleged; or  
(b) the same or related acts, errors or omissions alleged,  
in any claim, circumstance or other event which has, or could have been, or could be notified to any insurer (including the **Insurer**):
  - (i) under any policy of which this Policy is a renewal or replacement or which it may succeed in time; or
  - (ii) had a policy with coverage similar to that provided by this Policy been previously in force prior to the commencement of this Policy; or
- (ii) **Direct Financial Loss Discovered**:
  - (a) prior to the inception date of the **Policy Period**; or
  - (b) subsequent to the expiry of the **Policy Period**.

#### 4.2.2 Voluntary Surrender, Social Engineering and Impersonation Fraud

in connection with **Direct Financial Loss**:

- (i) arising out of the voluntary provision or surrendering (whether or not such provision and surrendering is induced by deception) of **Money**, **Negotiable Instruments** or other property;  
or
- (ii) arising out of, based upon or attributable to any actual or alleged **Social Engineering and Impersonation Fraud** (not necessarily limited to the performance of **Investment Advisory Services**) except under the "*Social Engineering Protection and Impersonation Fraud*" Extension.



## 4.3 Definitions

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In this policy the following words in **bold** shall have the definitions that follow:

### 4.3.1 Act of Infidelity

any dishonest, fraudulent or malicious act committed by an **Employee** alone or in collusion with others. However, with respect to **Loans** and **Trading**, **Act of Infidelity** means only a dishonest or fraudulent act committed by an **Employee** with the intention of obtaining improper financial gain for the **Employee** who committed such act.

Salaries, fees, commission, bonuses and similar **Employment Related Benefits** earned in the normal course of employment, including salary increases and promotions, do not constitute improper financial gain.

### 4.3.2 Asset and Liberty Expenses

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by any **Insured Person** to defend any **Asset and Liberty Proceeding**.

### 4.3.3 Asset and Liberty Proceeding

any proceeding brought against any:

- (i) **Outside Entity Director**; or
- (ii) **Insured Person**,

by any **Official Body** seeking:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of their real property or personal assets;
- (b) a charge over their real property or personal assets;
- (c) a temporary or permanent prohibition on them from holding the office of or performing the function of a director or officer;
- (d) a restriction of their liberty to a specified domestic residence or an official detention;
- (e) deportation of them following revocation of otherwise proper, current and valid immigration status for any reason other than their conviction of a crime; or
- (f) a restriction of them travelling, including any order to surrender their passport.

### 4.3.4 Automated Clearing House

any corporation or association which operates an electronic clearing and transfer mechanism for the transfer of pre-authorised debits and credits between **Financial Organisations** on behalf of a **Financial Organisations'** customers.

### 4.3.5 Automatic Fund

any **Fund** which is acquired, created or incorporated and first managed by the **Insured Entity** or a **Fund** during the **Policy Period** shall be considered an **Automatic Fund** provided that such **Fund**:

- (i) has total gross assets under management less than 25% of the total gross assets under management of all **Funds** at the inception date of this policy;
- (ii) is not incorporated or domiciled in the United States of America or its territories;
- (iii) is not regulated by the United States Securities Exchange Commission; and
- (iv) the **Automatic Fund** does not have an investment strategy that is materially different from the existing **Funds**.

If a fund is not deemed an **Automatic Fund** as per the conditions above, the **Insurer** will deem the fund an **Automatic Fund** for a period of 90 days from when the fund is acquired, created or incorporated and first managed by the **Insured Entity** (or until the end of the **Policy Period** if shorter). The **Insurer** may continue to insure the **Fund** on such terms and for such additional premium as agreed between the **Insurer** and the **Insured Entity**.



#### 4.3.6 Automatic Subsidiary

any entity, other than an **Investment Vehicle**, which during the **Policy Period** the **Policyholder** either directly or indirectly through one or more of its **Subsidiaries**, acquires or creates and:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the shareholder or equity voting power;
- (iii) holds more than half of the issued share capital or equity; or
- (iv) is a joint venture or entity over which a **Policyholder** exercises effective management and control;

provided such entity, at the date of such acquisition or creation:

- (a) has total gross assets under management of less than 25% of the combined total gross assets under management of all **Insured Entities** at the inception date of this policy;
- (b) has total gross assets of less than 20% of the combined total gross assets of all **Insured Entities** at the inception date of this policy;
- (c) is not incorporated, domiciled or providing **Investment Advisory Services** in the United States of America and is not regulated by the United States Securities Exchange Commission;
- (d) has not had a **Claim** made against it or a loss or **Direct Financial Loss** paid by any insurer within the three years immediately preceding the inception date of this policy; and
- (e) does not derive its revenue primarily from investment banking, merger and acquisition advice, hedge funds, agricultural schemes or derivatives trading.

If an entity is not deemed an **Automatic Subsidiary** as per the conditions above, the **Insurer** will deem the entity an **Automatic Subsidiary** for a period of 90 days from when the entity is acquired or created by a **Policyholder** (or until the end of the **Policy Period** if shorter). The **Insurer** may continue to insure the **Subsidiary** on such terms and for such additional premium as agreed between the **Insurer** and the first named **Policyholder**.

#### 4.3.7 Award

any binding decision for damages and/or costs awarded against the **Insured** by an ASIC approved external dispute resolution scheme or a **Wrongful Professional Act**.

#### 4.3.8 Bail Bond and Civil Bond Premium

the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee:

- (i) an **Outside Entity Director's**; or
- (ii) an **Insured Person's**,

contingent obligation for a specified amount required by a court hearing a **Claim** covered by this Policy.

#### 4.3.9 Central Depository

any clearing corporation where, as the direct result of an electronic clearing and transfer mechanism, entries are made evidencing an increase or reduction in an account, an obligation, a number of shares or the rights of any party.

#### 4.3.10 Certificate of Deposit

a written acknowledgement by a **Financial Organisation** of a deposit with a promise to pay such deposit to any person or to his order.



#### 4.3.11 Claim

any:

- (i) written demand;
- (ii) civil, regulatory, mediation, administrative or arbitration proceeding (including proceedings before an Australian Securities & Investments Commission approved external dispute resolution scheme of which the **Insured** is a member), a counter-claim, seeking compensation or other legal or equitable remedy; or
- (iii) criminal proceeding.

#### 4.3.12 Compensation Order

any order by a court of regulatory authority to pay compensation for loss or damage resulting from a contravention of any statute or legislative provision of any jurisdiction and includes, without limitation, an order made under sections 1317H or section 1317HA of the *Corporations Act 2001* (Cth) in respect of a **Wrongful Managerial Act**.

#### 4.3.13 Computer Fraud

- (i) the **Impairment** of any electronic data, **Uncertificated Security**, electronic computer program, **Electronic Communications** or **Voice Initiated Instruction** upon which an **Insured**, or any **Financial Organisation** acting on its behalf, has acted or relied; or
- (ii) **Impairment** of, or reliance by an **Automated Clearing House** or a **Financial Organisation** upon, any **Electronic Communication** or **Voice Initiated Instruction** which fraudulently purported to, but which did not, originate from an **Insured**.

**Computer Fraud** shall not include **Social Engineering and Impersonation Fraud**.

#### 4.3.14 Computer System

a computer and all networks, input, output, processing, storage or communication facilities, which are connected, directly or indirectly, to such a device accessible through the internet or internal network (including cloud computing services) or that are connected through data storage or other peripheral devices (including mobile telephones and tablets).

#### 4.3.15 Computer Virus Damage

the loss or destruction of or amendment to or damage to any electronic data upon which an **Insured**, or any **Service Bureau**, has acted or relied due to any unauthorised program or code fraudulently or maliciously created and/or distributed through the **Computer System** of an **Insured** or a **Service Bureau**.

#### 4.3.16 Confiscation Order

Any order by a court or regulatory authority to pay compensation for loss or damage resulting from a contravention of any statute or legislative provisions of any jurisdiction and includes, without limitation, an order made under section 1317H or section 1317HA of the *Corporations Act 2001* (Cth).

#### 4.3.17 Continuity Date

the applicable date specified as such under Item 6 ('Continuity Date') of the Schedule.

#### 4.3.18 Counterfeit

an imitation of any instrument which, because of the quality of the imitation, the **Insured** believes is the authentic original instrument. Fictitious instruments, which merely contain fraudulent misrepresentation of fact and are genuinely signed or endorsed are not **Counterfeit**.



#### 4.3.19 Crisis

any of the following unforeseen events occurring during the **Policy Period** where, in the reasonable opinion of the chief executive officer (or equivalent) of a **Policyholder**, the event has the potential to cause an imminent decrease of greater than 25% of the consolidated annual revenues of a **Policyholder** if left unmanaged:

- (i) the sudden, unexpected death or disability of a **Director or Officer**;
- (ii) loss of a major customer, contract or credit facility;
- (iii) workplace violence against an **Employee**;
- (iv) the first apparent unauthorised intrusion into any **Insured Entity's** or **Fund's Computer System**;
- (v) recall or boycott of any product;
- (vi) a man-made disaster; or
- (vii) any criminal or fraud **Investigation**.

"**Crisis**" does not include an event that affects an **Insured Entity's** or **Fund's** industry in general, rather than an **Insured Entity** or **Fund** specifically.

#### 4.3.20 Critical Regulatory Event

- (i) raid on, or on-site visit to, any **Insured Entity** which takes place during the **Policy Period** of this Policy by any **Official Body** that involves the production, review, copying or confiscation of files or interviews of any **Insured Person**; or
- (ii) public announcement relating to the foregoing.

#### 4.3.21 Current Third Party

an investor, beneficiary, customer, supplier, or service provider with whom the **Insured** has a genuine third party relationship.

#### 4.3.22 Data Protection Breach

any actual or alleged act, error or omission resulting in the breach of Australian state or federal legislation, provisions or regulations regarding data protection laws and privacy laws.

#### 4.3.23 Defence Costs

reasonable fees, costs and expenses:

- (i) incurred by, or on behalf of, an **Insured** in the investigation, defence, negotiation, settlement or appeal of a **Claim** covered under this Policy; and
- (ii) of accredited experts retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in respect of a **Claim** covered under this Policy,

but shall not include remuneration of any **Insured Person**, cost of their time or costs or overheads of any **Insured Entity** or **Fund** (except costs under Extension 4.1.7 ('Court Attendance')).

#### 4.3.24 Derivative Demand

a written demand by any holder of **Securities** upon the board of directors (or equivalent management body) of the **Insured Entity** to commence a civil action on behalf of the **Insured Entity** against an **Insured Person** for any **Wrongful Professional Act** or **Wrongful Managerial Act** on the part of such **Insured Person**.

#### 4.3.25 Derivative Investigation

an internal inquiry or investigation undertaken by the **Insured Entity** or on behalf of the **Insured Entity** by its board of directors (or equivalent management body) or any committee of the board of directors (or equivalent management body) as to how the **Insured** should respond after the receipt by an **Insured** of a **Derivative Suit** or a **Derivative Demand**.



“**Derivative Investigation**” shall not include any routine or regularly scheduled internal supervision, inspection, compliance, review, examination, production or audit, including any routine or regularly scheduled obligation of any **Insured** to provide information, conducted in an **Insured’s** and/or **Official Body’s** normal review or compliance process.

#### 4.3.26 **Derivative Investigation Hearing Costs**

the reasonable and necessary fees, costs and expenses incurred by the **Insured Person** after the commencement of the **Policy Period** solely in connection with a **Derivative Investigation**. **Derivative Investigation Hearing Costs** shall not include the compensation of any **Insured Person**.

#### 4.3.27 **Derivative Suit**

a proceeding brought derivatively on behalf of an **Insured Entity** by any holder of **Securities** against an **Insured Person**.

#### 4.3.28 **Direct Financial Loss**

direct financial loss sustained by an **Insured Entity, Fund** or **Plan**.

“**Direct Financial Loss**” shall not include: (a) fines and penalties; or (b) salaries, fees, commissions, bonuses and similar employee benefits earned in the normal course of employment, including salary increases and promotions, other than bonuses, commissions or profit sharing paid to an **Employee** for a specific transaction with which such **Employee** was involved and in respect of which that **Employee** had committed an **Act of Infidelity** covered under this policy.

#### 4.3.29 **Director or Officer**

any natural person who was, now is, or during the **Policy Period** becomes:

- (i) an executive or non-executive director or officer, responsible officer or compliance committee member of an **Insured Entity** or **Fund**;
- (ii) a person who acts as a member of a committee established by or approved by the board of directors of any **Insured Entity** or **Fund** whether under statute or otherwise;
- (iii) a de facto director of an **Insured Entity** or **Fund**;
- (iv) prospective director named as such in any listing particulars or disclosure document (including a prospectus) issued by an **Insured Entity** or **Fund**;
- (v) a natural person general partner in a **Fund** which is established as a limited partnership;
- (vi) a natural person trustee of a **Fund** which is established as a trust;
- (vii) a natural person superannuation trustee, committee member or administrator of the **Plan** or constructive trustee of the **Plan**; or
- (viii) an **Employee** of an **Insured Entity**:
  - (a) who is concerned with or takes part in the management of that **Insured Entity**;
  - (b) with respect to a **Claim** alleging an **Employment Practice Breach**;
  - (c) named as a co-defendant with a person specified in subparagraphs (i) to (vii) and (viii)(a) of this “Director or Officer” Definition in a **Claim** for a **Wrongful Managerial Act** in which that **Employee** is alleged to have been involved; or
  - (d) in connection with an **Investigation**.

#### 4.3.30 **Discovered or Discovery (of a Direct Financial Loss)**

when any **Responsible Person** first becomes aware of or had any knowledge of any act, omission or event which could reasonably be foreseen to give rise to a **Direct Financial Loss** covered by this policy, even though the exact amount or details of such **Direct Financial Loss**, act, omission or event are not known at the time of **Discovery**. Such **Discovery** shall constitute **Discovery** by every **Insured**.



#### 4.3.31 Discovery Period

a period immediately following expiry of the **Policy Period** during which written notice may be given to the **Insurer** of:

- (i) a **Direct Financial Loss Discovered** during such period which was a direct result of an **Act of Infidelity** or **Third Party Crime** committed prior to the expiry of the **Policy Period**; or
- (ii) a **Claim** first made during such period or the **Policy Period** for a **Wrongful Professional Act** or **Wrongful Managerial Act** committed prior to the expiry of the **Policy Period**; or
- (iii) in the case of any other event insured under this policy, matters which occurred prior to the expiry of the **Policy Period**.

#### 4.3.32 Document

any document of any nature whatsoever other than currency or other negotiable instrument, or records thereof.

#### 4.3.33 Electronic Communications

the communications that have been transmitted electronically through an **Electronic Communication System**, via the Internet, by **Tested** communication, or through communications recorded on electronic data or electronic data processing media.

#### 4.3.34 Electronic Communications System

**Electronic Communication** sent by automated communications systems or any **Computer System** which provides an **Insured Entity** or **Fund**, or any **Financial Organisation** acting on their behalf, with direct access to the **Computer System** of another **Financial Organisation** and vice versa, including cash management systems and other computer-based systems which allow dematerialised communications between an **Insured Entity** or **Fund** and other parties.

#### 4.3.35 Employee

- (i) any natural person who was, is or becomes a full-time, part-time, seasonal or temporary worker of any **Insured Entity** or **Fund** who works under a contract of service with the **Insured Entity** or **Fund**, or who is undertaking work experience, whom such **Insured Entity** has the right to govern and direct in the performance of such services, and whom the **Insured Entity** or **Fund** compensates by way of salary, wages and/or commissions; or
- (ii) **Director or Officer** when performing acts coming within the scope of the usual duties of an employee rather than directorial acts on behalf of that **Insured Entity** or **Fund**; or
- (iii) with respect to the Cover 3.1.1 ('Investment Manager and Fund Crime Protection') only:
  - (a) a trustee, fiduciary, administrator, or officer of any **Plan**;
  - (b) ex-employee, for a period not exceeding 60 days following the termination of their employment with an **Insured Entity** or **Fund**, other than when such termination is a result of an **Act of Infidelity** covered under this policy;
  - (c) employee whom the first named **Policyholder** is unable to identify by name, but whom the first named **Policyholder** proves beyond reasonable doubt has committed an **Act of Infidelity** which caused a **Direct Financial Loss** covered under this policy;
  - (d) solicitor, other than a sole practitioner, retained by an **Insured Entity** or **Fund**, or any employee of such solicitor, whilst providing legal services exclusively for an **Insured Entity** or **Fund**; or
  - (e) company or person(s) authorised by a written contract with an **Insured Entity** to perform accounting, data processing of cheques, payroll or computing services outsourced by an **Insured Entity**.

"**Employee**" does not mean any independent broker, independent financial adviser, or any similar agent or independent representative remunerated on a sales or commission basis unless specifically agreed by the **Insurer** and endorsed to this policy.



#### 4.3.36 **Employment Practice Breach**

any actual or alleged act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective **Employee** or **Insured Person** of any **Insured Entity** or **Fund**.

#### 4.3.37 **Excess Limit**

the amount specified in Item 4 of the Schedule that is available to each of the **Policyholder's Directors** for any **Loss** when the original **Limit of Liability** has been exhausted by a **Loss** under Section 2 ('Management Liability'). The **Excess Limit** will not apply to any **Claim, Investigation** or other matter covered under Section 2 ('Management Liability') that is a related event in accordance with General Provision 2.4.5 ('Related Claims, Investigations or Matters') with any previously notified **Claim, Investigation**, other event or circumstance.

#### 4.3.38 **Financial Organisation**

- (i) any bank, credit institution, financial institution, undertaking for collective investment in **Negotiable Instruments**, investment firm or similar entity; or
- (ii) a **Central Depository** in connection with the purchase, sale, transfer or pledge of an **Uncertificated Security**; or
- (iii) any person or organisation with which an **Insured Entity** or **Fund** has a written agreement for the provision of purchasing services, safekeeping, registration and entitlement records in connection with **Negotiable Instruments**.

#### 4.3.39 **Fines & Penalties**

any fine or pecuniary penalty that is not for a deliberate or for an intentional act pursuant to any statute which an **Insured** is legally liable to pay.

**Fines & Penalties** shall not include any amount which the **Insurer** is prohibited from paying by law.

#### 4.3.40 **Forgery or Forged**

the hand-written signing or endorsing of the name of a genuine person or a copy of said person's signature without authority and with intent to deceive; it does not include the signing or endorsing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

Mechanically or electronically produced or reproduced signatures are treated the same as hand-written signatures.

Any endorsement upon an **Instrument of Value** of a fictitious name, or an endorsement upon an **Instrument of Value** procured in a face to face transaction of the name of anyone impersonated, shall be deemed to be a **Forged** endorsement.

#### 4.3.41 **Fraud Investigator**

any independent fraud investigator nominated by an **Insured Entity** or **Fund** who does not have a conflict of interest and who is approved by the **Insurer**. Any person or entity listed as a "**Fraud Investigator**" by endorsement to this policy is deemed to be pre-approved by the **Insurer**, provided there is no clear conflict of interest.

#### 4.3.42 **Fraudulent Alteration**

a material alteration to an instrument for a fraudulent purpose by any person other than a person who was authorised to prepared or sign the instrument.





#### 4.3.43 Fraudulent Transaction

an **Insured Entity** or **Fund**, or any **Financial Organisation** acting on their behalf, having acted or relied upon:

- (i) any **Forged, Fraudulently Altered or Counterfeit**:
  - (a) **Instrument of Value**;
  - (b) **Instruction**;
  - (c) **Negotiable Instrument**; or
  - (d) currency; or
- (ii) any **Negotiable Instrument** which has been lost or stolen.

**Fraudulent Transaction** shall not include **Social Engineering and Impersonation Fraud**.

#### 4.3.44 Fund

any trust, investment trust, investment management company (open or closed ended), fund, managed investment scheme, mandate, partnership, or other similar entity (including any sub-fund or sub-trust) specifically listed in the **Submission** or listed by endorsement to the policy provided any such "**Fund**" is managed by an **Insured Entity** at the time of the **Wrongful Professional Act** or **Wrongful Managerial Act** on which a **Claim** is based, or at the time of an **Act of Infidelity** or **Third Party Crime** which results in **Direct Financial Loss Discovered** during the **Policy Period**. "**Fund**" shall not include any **Plan**.

#### 4.3.45 High Risk Activities

investment banking; insurance; the provision of split capital investment trusts; operation of hedge funds; derivative trading; activities relating to **Investment Vehicles**; the use of micro-organisms or biological substances to perform industrial processes; the design, development, manufacture, distribution, license, leasing or sale of computers, computer-related products, communications equipment or the Internet; or providing services with respect to such products; the provision of medical advice, diagnosis or treatment and conducting trials involving the administration of drugs.

#### 4.3.46 Hijacking

illegal holding under duress, for a period in excess of 6 hours, of an **Insured Person**, during travel in the course of employment with an **Insured Entity** or **Fund** on or in any aircraft, motor vehicle or waterborne vessel.

#### 4.3.47 Impairment

any actual or attempted preparation, input, modification or destruction for a fraudulent purpose.

#### 4.3.48 Insolvency Hearing Costs

the reasonable and necessary fees, costs and expenses incurred by an **Insured Person** to retain legal advisors for an **Insured Person's** preparation for and attendance at any formal or official hearing in connection with the investigation or inquiry into the affairs of an **Insured Person** or **Insured Entity** or **Fund** by any insolvency administrator, receiver, bankruptcy trustee or liquidator or the equivalent under the laws of any jurisdiction, where the facts underlying such hearing, investigation or inquiry may be expected to give rise to a **Claim** against such **Insured Person**. In no event shall **Insolvency Hearing Costs** include the remuneration of any **Insured Person**, costs of their time or any other costs or overheads of any **Insured Entity** or **Fund**.

#### 4.3.49 Instruction

any written or printed instruction, advice or **Tested** facsimile directed to equipment maintained by an **Insured Entity** or **Fund** within a secure environment, authorising or acknowledging the transfer, payment, delivery or receipt of funds or **Property**.

#### 4.3.50 Instrument of Value

any cheque, bill of exchange, draft, **Certificate of Deposit**, letter of credit, promissory note,



withdrawal order or receipt for the withdrawal of funds or **Property**, money order, orders upon public treasuries, or any similar instruments of value serving the same purpose.

#### 4.3.51 Insured

any **Insured Entity**, **Fund**, any **Outside Entity Director** and any **Insured Person**.

#### 4.3.52 Insured Entity

- (i) the **Policyholder**, and **Subsidiaries**; and
- (ii) a **Plan** with respect to Section 2 ('Management Liability') and Section 3 ('Crime Protection').

#### 4.3.53 Insured Person

- (i) an **Employee** of an **Insured Entity** or **Fund**;
- (ii) any person or entity for whose **Wrongful Professional Act** an **Insured Entity** is legally liable with respect to Cover 1.1.1 ('Investment Manager Professional Civil Liability');
- (iii) a **Director or Officer** of an **Insured Entity** or **Fund**;
- (iv) an **Outside Entity Director** for a **Wrongful Managerial Act** with respect to Cover 2.1.1 and Cover 2.1.2, provided that any cover provided shall be specifically excess of any:
  - (a) other applicable insurance in force in respect of the **Outside Entity**, including Appendix II ('the Outside Entity Directorship Schedule') or any policy specified in the Schedule of Outside Directorships attached to the **Submission**; and
  - (b) indemnification provided to the **Outside Entity Director** by the **Outside Entity**;
- (v) a **Director or Officer** or **Employee** of an **Insured Entity** or **Fund** or a relative or guest of such person with respect to Extension 3.2.1 ('Kidnap Response'),

but only when and to the extent that such person is acting for or on behalf of the **Insured Entity**, **Fund** or **Outside Entity** in any of the capacities referred to in (i) to (iv) above.

"**Insured Person**" is extended to include:

- a) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- b) the administrator, heirs, legal representatives, or executor of a deceased, incompetent, insolvent or bankrupt estate,

of an **Insured Person** referred to in (i) to (iii) above, to the extent that a **Claim** is brought against them solely by reason of them having an interest in property that is sought to be recovered in a **Claim**.

#### 4.3.54 Insurer

as specified in Item 8 of the Schedule.

#### 4.3.55 Investigation

any hearing, examination, investigation or inquiry by an **Official Body** into the affairs of an:

- (i) **Outside Entity**; or
- (ii) **Insured Entity** or **Fund**

during the **Policy Period**:

- (a) requiring attendance before the **Official Body**; or
- (b) requiring production of documents to the **Official Body**; or
- (c) requiring questions to be answered to the **Official Body**; or
- (d) identifying them in writing as a target of a hearing, examination, investigation or inquiry by an **Official Body**.

An **Investigation** shall be deemed to be first made when the **Insured Person** is first so required or so identified.



**Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or hearing, investigation, examination or inquiry which focuses on an industry rather than an **Insured**, **Outside Entity** or **Fund** once an **Insured Person**.

#### 4.3.56 Investigation Costs

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by or on behalf of an **Insured Person** for the principal purpose of preparing for, responding to, or attending an **Investigation** or preparing a report (and supplementary reports as necessary) by the **Insured Person** to any **Official Body**.

"**Investigation Costs**" shall not include the remuneration of any **Insured Person**, cost of their time, compliance costs or overhead of any **Insured Entity** or **Fund**.

#### 4.3.57 Investment Advisory Services

investment advisory services, investment management services, responsible entity services and trustee services declared in the **Submission**, including but not limited to:

- (i) the formation, capitalisation, operation and management of any **Fund**;
- (ii) the disposal of investments in a **Fund**;
- (ii) the marketing of any **Fund** and the solicitation of potential investors in any such **Fund**;
- (iii) portfolio management and asset allocation services;
- (iv) selection of an outside services provider and its oversight and direction of the performance of such outside service provider;
- (v) administration, custodial or registry services; or
- (vi) documents, presentations or publications prepared or written or issued by an **Insured** for or on behalf of any **Fund**,

performed by, required to be performed by, or on behalf of an **Insured Entity** or **Fund**, pursuant to an agreement with a third party: (i) for compensation; or (ii) in conjunction with services for compensation.

#### 4.3.58 Investment Manager Insurance Advisory Panel

the solicitors appointed from time to time by the **Insurer**, as currently listed in Appendix III ('Investment Managers Insurance Advisory Panel').

#### 4.3.59 Investment Vehicle

- (i) any off balance sheet entity whose revenue primarily consists of the return on investments (including a special purpose vehicle or structured investment vehicle); or
- (ii) any fund, managed investment scheme or trust, in which a person other than any **Policyholder** (whether directly or indirectly) has a legal or beneficial interest.

#### 4.3.60 Kidnap Response Costs

the reasonable fees and expenses incurred in response to any **Kidnapping**, **Hijacking** or **Wrongful Detention** incident anywhere other than Afghanistan, Algeria, Central or South American countries, the Kashmir region administered by India, Iraq, Lebanon, Niger, Nigeria, Pakistan, Philippines, Chechnya, Iran, South Sudan, Sudan, Syria or Somalia. "**Kidnap Response Costs**" shall include related costs for travel; accommodation; qualified interpretation; communication and payments to informants.

#### 4.3.61 Kidnapping

any event or connected series of events of seizing, detaining or carrying away by force or fraud an **Insured Person**, while acting outside his country of residence in the course of employment by an **Insured Entity**, for the purpose of demanding ransom monies.



#### 4.3.62 Limit of Liability

the amount specified in Item 3 of the Schedule as the **Insurer's** aggregate limit of liability for all Sections.

#### 4.3.63 Loan

- (i) any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained by or from an **Insured Entity** or **Fund**;
- (ii) any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by an **Insured Entity** or **Fund**; and
- (iii) any payments made or withdrawals from the account of a customer of an **Insured Entity** or **Fund** involving items which are not finally paid for any reason.

#### 4.3.64 Loss

any amount which the **Insured** is legally liable to pay, including **Investigation Costs** and **Defence Costs**, awards of damages (including punitive and exemplary damages), awards of costs or settlements (including plaintiff's legal costs and expenses), **Compensation Orders**, **Awards**, pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages.

"**Loss**" shall include any amount covered under any Extension under Section 1, Section 2 or Section 3 of this policy but only to the extent set out in the relevant Extension.

"**Loss**" shall not include:

- (i) taxes; other than:
  - (a) an amount of GST for which an **Insured** or **Outside Entity** is not entitled to an input tax credit; or
  - (b) the personal liability of an **Insured Person** or **Outside Entity Director** to the extent that the **Insured Entity** or the **Outside Entity** is not able to pay or reimburse such corporate taxes or superannuation contributions (either totally or partially) due to insolvency or other reason; or
- (ii) remuneration, cost of the time of any **Insured Person** or **Outside Entity Director**, or costs or overheads of any **Insured Entity**, **Fund** or **Outside Entity**, except with respect to Extensions 4.1.7 ('Court Attendance'); or
- (iii) **Fines & Penalties** or unless specifically provided for in Extension 2.2.11 ('Fines and Penalties'); or
- (iv) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; or
- (v) principal, interest or other monies accrued or due (either now or in the future) but not yet paid to an **Insured Entity** or **Fund** as a result of any loan, lease or extension of credit; or
- (vi) remuneration or any employment-related benefits of any **Insured**; or
- (vii) any sum payable pursuant to a financial support direction or contribution notice issued in respect of any pension scheme; or
- (viii) clean-up costs relating to containment, cleanup, removal or treatment of hazardous materials, pollution or product defects; or
- (ix) the multiplied portion of multiple damages awarded outside of Australia or New Zealand; or
- (x) amounts which the **Insurer** is prohibited from paying by law or regulation; or
- (xi) fees, commissions, or other remunerations.



#### 4.3.65 Mitigation Costs

reasonable and necessary payments to a potential plaintiff to reduce the ultimate civil legal liability of an:

- (i) **Outside Entity Director**; or
- (ii) **Insured Person**.

In no event shall **Mitigation Costs** include: (a) cost to mitigate a liability which is not otherwise covered under this Policy; or (b) payments arising out of, based upon or attributable to an **Investigation** or **Pre-Claim Inquiry**.

Where such payment reduces the ultimate civil legal liability of:

- (i) both an **Outside Entity Director** and an **Outside Entity**, then the **Mitigation Costs** will be apportioned between the **Outside Entity Director** and **Outside Entity** and the **Insurer** shall pay that apportioned to the **Outside Entity Director** but shall not cover that apportioned to the **Outside Entity**;
- (ii) both an **Insured Person** and an **Insured Entity** or **Fund**, then the **Mitigation Costs** will be apportioned between the **Insured Person** and **Insured Entity** or **Fund** and the **Insurer** shall pay that apportioned to the **Insured Person** but shall not cover that apportioned to the **Insured Entity** or **Fund**.

#### 4.3.66 Money

currency, coins, bank notes and bullion, cheques, travellers' cheques, registered cheques, postal orders and money orders.

#### 4.3.67 Negotiable Instrument

- (i) any stock, shares, scrip, transfer, certificate, bond, coupon and all other type of security (including securities held in book entry form or as a **Statement of Uncertificated Security**), bills of exchange, promissory notes, **Certificates of Deposit**, letters of credit, warrants, title deeds, deeds of trust, bearer instruments or other **Instruments of Value** and any other negotiable documents;
- (ii) original (including original counterparts) agreements in writing, (other than corporate, partnership or personal guarantees), having value which is, in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment.

#### 4.3.68 Occupational Health & Safety Incident

any actual or alleged breach of an occupational health and safety law or regulation, including a law or regulation dealing with industrial or workplace death or manslaughter occurring during the **Policy Period**.

#### 4.3.69 Official Body

any regulator, government, governmental body, governmental or administrative agency, self-regulatory body, professional body, authority, Royal Commission, Commission of Inquiry, stock exchange or any other entity or person having legal authority to conduct an **Investigation**.



#### 4.3.70 Outside Entity

any entity, including any not for profit entity, but not an entity that:

- (i) is an **Insured Entity, Plan, Fund or Investment Vehicle**; or
- (ii) derives more than 20% of its revenue from **High Risk Activities**; or
- (iii) had negative networth at the acquisition date or the inception date of this Policy (whichever is later); or
- (iv) has its securities listed on any Stock Exchange in the United States of America, unless the entity is listed in Appendix II ('the Outside Entity Directorship Schedule') or by an endorsement to this Policy as an **Outside Entity**.

For any entity that falls within (ii) or (iii) above and is not listed in Appendix II ('the Outside Entity Directorship Schedule') or in an endorsement to this Policy, they will be considered an **Outside Entity** automatically for a period of 90 days from the date an **Outside Entity Director** first serves that entity provided the first named **Policyholder** shall submit in writing to the **Insurer** the particulars of such entity. At the first named **Policyholder's** request, cover may be extended for a longer period of time provided that the first named **Policyholder** provides the **Insurer** with sufficient details during such 90 day period to permit the **Insurer** to assess and evaluate its exposure with respect to such entity and the first named **Policyholder** accepts any amendments to the Policy terms, including payment of any reasonable additional premium after being pro-rated for the period of the **Policy Period**.

#### 4.3.71 Outside Entity Director

a natural person who did, does now or in the future serves, at the specific request of an **Insured Entity or Fund**, as a director, officer, trustee (except a pension trustee), governor or equivalent of an **Outside Entity**.

"**Outside Entity Director**" is extended to include:

- (i) the spouse or domestic partner (including of the same sex); and
- (ii) the administrator, heirs, legal representatives, or executor of a deceased, incompetent, insolvent or bankrupt estate,

of the **Outside Entity Director** referred to above with respect to the **Wrongful Managerial Acts** of the **Outside Entity Director**.

Cover for any **Outside Entity Director** shall only apply for any **Wrongful Managerial Acts** committed or other matters occurring whilst such **Outside Entity Director** is or was acting at the specific request of an **Insured Entity or Fund**.

#### 4.3.72 Outside Entity Liability

any **Claim** against an **Outside Entity Director** first made during the **Policy Period** for a **Wrongful Managerial Act** notified to the **Insurer** as soon as practicable during the **Policy Period** for any **Wrongful Managerial Act**.

#### 4.3.73 Per Diem

an amount of \$500.

#### 4.3.74 Personal Expenses

the expenses of:

- (i) an **Outside Entity Director**; or
- (ii) an **Insured Person**,

contracted and owed by them prior to the **Confiscation Order** and paid directly by the **Insurer** to a third-party service provider for their:

- (a) schooling costs for dependant children; and
- (b) monthly primary housing mortgage payments or rental costs; and
- (c) utilities costs, including but not limited to private water, gas, electricity, phone and internet



services; and

- (d) personal insurance premiums, including for personal property, life, and health insurance policies,

provided that the expenses are in excess of any personal allowance granted in connection with the **Confiscation Order** and the expenses fall due during the period beginning 30 days after the date of the **Confiscation Order** and ending when the **Insured Person** or **Outside Entity Director** has obtained its discharge or revocation, but in no event more than 12 months after the **Confiscation Order**.

#### 4.3.75 Plan

any pension, employee benefit, profit-sharing, welfare benefit, sharesaver or share option plan or charitable fund maintained by an **Insured Entity** for the benefit of the past, present and/or future **Employees** of that **Insured Entity** or their respective beneficiaries where the **Plan** existed on or before the inception date of this policy.

#### 4.3.76 Policyholder

the organisation(s) specified in Item 1 of the Schedule.

#### 4.3.77 Policyholder's Directors

any natural person who was, is or during the **Policy Period** becomes a director of a **Policyholder**.

#### 4.3.78 Policy Period

the period specified in Item 2 of the Schedule.

#### 4.3.79 Previous Insurer

the insurer of a **Previous Policy**.

#### 4.3.80 Previous Policy

any insurance policy(s) held by the first named **Policyholder** specified in Item 11 of the Schedule.

#### 4.3.81 Pollutants

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

#### 4.3.82 Pre-Claim Inquiry

a verifiable request for an **Insured Person** to:

- (i) appear at a meeting or interview; or
- (ii) produce documents, records or information,

where the request is made by:

- (a) the **Insured Entity** or **Fund**; or
- (b) the **Insured Entity's** or **Fund's** board of directors (or the equivalent management body) on behalf of such **Insured Entity** or **Fund**; or
- (c) any committee of the board of directors (or the equivalent management body) on behalf of any **Insured Entity** or **Fund**,

and:

- (i) arises out of an inquiry or investigation by an **Official Body** concerning any **Insured**; or
- (ii) following a formal written notification to an **Official Body** by any **Insured** or whistleblower informing them of an actual or suspected material breach of a **Insured Person's** legal or regulatory duties if and to the extent that such inquiry is requested by an **Official Body**.



**“Pre-Claim Inquiry”** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Insured Entity’s, Fund’s** or **Official Body’s** normal review or compliance process.

#### 4.3.83 Pre-Claim Inquiry Costs

reasonable and necessary fees, costs and expenses incurred by a **Insured Person** solely in connection with his or her preparation for and response to a **Pre-Claim Inquiry** directed at such **Insured Person**, but excluding:

- (i) the compensation of any **Insured Person** or cost of their time;
- (ii) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of any **Insured Entity**, the requester or any other third party; and
- (iii) any other costs or overheads of any **Insured Entity**.

#### 4.3.84 Professional Fees

the reasonable and necessary fees, costs and expenses of appropriately qualified professionals. In no event shall **Professional Fees** include costs attributable to an **Investigation** or **Pre-Claim Inquiry**.

#### 4.3.85 Property

- (i) cash (including currency, coins and banknotes), bullion, precious metals and articles made therefrom, jewellery, gems (including uncut gem stones), precious and semi-precious stones, stamps, postal orders and insurance policies;
- (ii) any **Instrument of Value**;
- (iii) any **Negotiable Instrument**; and
- (iv) all other negotiable and non-negotiable instruments or contracts representing money or other property (real or personal) or interests therein, and other valuable papers, including books of account and other records used by an **Insured Entity** or **Fund** or **Plan** in the conduct of their business, in which an **Insured Entity** or **Fund** or **Plan** has an interest, or which are held by an **Insured Entity** or **Fund** or **Plan** for any purpose or in any capacity.

#### 4.3.86 Prosecution Costs

reasonable fees, costs and expenses incurred, with the **Insurer’s** prior written consent, by an **Insured Person** or **Outside Entity Director**, to bring legal proceedings for a declaration or injunction in connection with any **Asset and Liberty Proceedings**.

#### 4.3.87 Public Relations Consultants

public relations consultants retained by the **Insured** with the **Insurer’s** prior written consent.

#### 4.3.88 Public Relations Services

services provided by the **Public Relations Consultants** to mitigate the adverse effect or potential adverse effect on:

- (i) an **Insured Person’s** reputation; or
- (ii) an **Outside Entity Director’s** reputation.

#### 4.3.89 Retention

the amount(s) specified in Item 5 of the Schedule as the Retention(s) applicable to each Cover and Extension.

#### 4.3.90 Response Consultant

NYA International Ltd or other response consultants appointed with the **Insurer’s** prior consent.





**4.3.91 Responsible Person**

any person appointed by an **Insured Entity** or **Fund** with responsibility for monitoring or reporting **Claims** or **Direct Financial Losses**, or a **Director or Officer**, or partner, departmental director, senior manager, general counsel, risk manager, trustee or equivalent of an **Insured Entity** or **Fund**.

**4.3.92 Securities**

any security representing debt of or equity interests in an **Insured Entity** or **Fund**.

**4.3.93 Securities Claim**

a **Claim** against an **Insured Entity** or **Fund** alleging a violation of any laws (statutory or common), rules or regulations concerning **Securities**, the purchase or sale or offer or solicitation of an offer to purchase or sell **Securities**, or any registration relating to such **Securities**:

- (i) brought by any person alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any **Securities**; or
- (ii) brought by any holder of **Securities** with respect to such security-holder's interest in **Securities**; or
- (iii) brought derivatively on behalf of any **Insured Entity** or **Fund** by a security-holder, seeking compensation or other legal remedy for a **Wrongful Managerial Act** of an **Insured Entity** or **Fund** or **Insured Person**.

"**Securities Claim**" shall not mean any claim by a director, officer or employee of an **Insured Entity** or **Fund** alleging, arising out of, based upon or attributable to the loss of, or the failure to receive or obtain, the benefit of any **Securities** (including but not limited to any warrants or options).

**4.3.94 Senior Lawyer**

a senior lawyer to be mutually agreed upon by the first named **Policyholder** and the **Insurer**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the **Loss** or **Direct Financial Loss** was incurred.

**4.3.95 Service Bureau**

a natural person, partnership or corporation authorised by written agreement with an **Insured Entity** or **Fund** to perform data processing services using **Computer Systems**.

**4.3.96 Social Engineering and Impersonation Fraud**

the **Insured** having, in good faith:

- (i) transferred **Money** or **Negotiable Securities** or other property from any account; or
- (ii) amended current payment details of a **Current Third Party**,

as a result of a fraudulent instruction communicated by e-mail, mail, telephone or facsimile to an **Insured Person** of the **Insured** by a person purporting to be an **Insured Person** or **Current Third Party**.



#### 4.3.97 Statement of Uncertificated Security

a written statement of the issuer of an **Uncertificated Security** containing:

- (i) a description of the issue of which the **Uncertificated Security** is a part; and
- (ii) the number of share or units:
  - (a) transferred to the registered owner;
  - (b) pledged by the registered owner to the registered pledgee;
  - (c) released from the pledge by the registered pledgee;
  - (d) registered in the name of the registered owner on the date of the statement; or
  - (e) subject to pledge on the date of the statement; and
- (iii) the name and address of the registered owner and registered pledgee; and
- (iv) a notation of any liens and restrictions of the issuer and any adverse claims to which the **Uncertificated Security** is or may be subject or a statement that there are no such liens, restriction or adverse claims; and
- (v) the date:
  - (a) the transfer of the shares or units to the new registered owner of the share or units is registered,
  - (b) the pledge of the registered pledgee was registered, or
  - (c) of the statement, if it is a periodic or annual statement.

#### 4.3.98 Submission

each and every signed proposal form, including the declarations, statements and representations therein, its attachments, any publicly available financial statements of any **Insured Entity, Fund or Plan** and all other information which is either submitted to the **Insurer** or incorporated in the proposal form by reference.

#### 4.3.99 Subsidiary

any entity, other than an **Investment Vehicle** or **Fund**, in which a **Policyholder** either directly or indirectly through one or more other entities:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the shareholder or equity voting power; or
- (iii) directly or indirectly holds more than half of the issued share capital or equity, on or before the inception date of this policy.

**Subsidiary** includes any joint venture or entity over which a **Policyholder** exercises effective management and control on or before the inception date of this policy.

#### 4.3.100 Tested

a method of authenticating the contents of a communication between an **Insured Entity** or **Fund** and a customer or a **Financial Organisation**, or between offices of an **Insured Entity** or **Fund**, for the purpose of protecting the integrity of the communication.

#### 4.3.101 Third Party Crime

- (i) any **Fraudulent Transaction**;
- (ii) any **Computer Fraud** or **Computer Virus Damage**; or
- (iii) the physical loss of, damage to or destruction of **Property** anywhere by any means, by any natural person who is not an **Employee** and which does not fall within Definition 4.3.1 ('Act of Infidelity').



#### 4.3.102 Trading

trading or other dealings in **Negotiable Instruments**, commodities, futures, options, foreign or Federal funds, currencies, foreign exchange and the like.

#### 4.3.103 Transaction

- (i) the consolidation or merger of a **Policyholder** with, or the acquisition of more than 50% of the issued share capital or equity or shareholder voting rights of the **Policyholder** by:
  - (a) one person or one organisation, or
  - (b) persons or organisations acting in concert, other than another **Insured Entity** or **Fund**;
- (ii) the appointment to an **Insured Entity** or **Fund** of a receiver, administrator, manager, liquidator or any other insolvency officeholder, but only in relation to such **Insured Entity** or **Fund** and **Subsidiaries** thereof;
- (iii) the merger, consolidation or other combination of any **Fund** with any other unrelated fund not currently covered under this policy; but only in relation to such **Fund**; or
- (iv) the investment advisor and/or principal underwriter/general distributor of any **Fund** becoming deregistered or ceasing to act as such, but only in relation to such **Fund**.

#### 4.3.104 Uncertificated Security

a share, participation or other interest in property, or an enterprise of the issuer or an obligation of the issuer which:

- (i) is a type commonly dealt in upon securities exchanges or markets;
- (ii) is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and
- (iii) (a) is not represented by any instrument;  
(b) is part of a master or global certificate; or  
(c) represents a paper certificate that has been surrendered by a **Financial Organisation** and which paper certificate has been combined into a master depository note and the paper certificates are immobilised; and
- (iv) is shown as an electronic entry on the account of the transferor, pledgor or pledgee at a **Central Depository**.

#### 4.3.105 Verification Policy

a written policy of the **Policyholder** which outlines the **Verification Process** for requests:

- (i) to change the bank account details of any person described in subparagraphs (i) or (ii) of the "Employee" Definition, **Director or Officer**, or a **Current Third Party**, independently of any instruction to transfer **Money** from an **Insured's** own accounts; or
- (ii) to make payment to the bank account of any person described in subparagraphs (i) or (ii) of the "Employee" Definition, **Director or Officer**, or a **Current Third Party**; or
- (iii) to amend an **Insured's** current payment details of any **Current Third Party**.



#### 4.3.106 Verification Process

a method of authenticating the contents of a communication between the **Insured** and:

- (i) an **Insured Person**;
- (ii) a **Current Third Party**;
- (iii) offices of the **Insured Entity** or **Fund**; or
- (iv) a bank, credit union, financial institution or similar entity,

for the purpose of protecting the integrity of the communication or the genuineness of the **Insured Person** or **Current Third Party** who communicated the instruction by verifying independently from the person who communicated the instruction and confirmed by the **Insured**:

- (i) through a telephone call back procedure consisting of calling the telephone number of such requestor's organisation which is:
  - (a) held on file by the **Insured Entity** or **Fund**; or
  - (b) verifiable in the public domain;

or

- (ii) where such instruction is in the form of an e-mail or mail or facsimile address, by verifying and ensuring that the genuine requestors' work e-mail or mail address is:
  - (a) held on file by the **Insured Entity** or **Fund**;
  - (b) verifiable in the public domain; and
  - (c) through a telephone call back procedure consisting of calling the telephone number of the requestor's organisation which is:
    - (i) held on file by the **Insured Entity** or **Fund**; or
    - (ii) verifiable in the public domain.

#### 4.3.107 Voice Initiated Instruction

any telephone instruction requesting the transfer of funds or **Property** which is **Tested** or subject to a call back to an authorised person other than the individual initiating the transfer.

#### 4.3.108 Wrongful Detention

the arbitrary or capricious confinement of an **Insured Person**, while acting in the course of his employment by an **Insured Entity**, by person(s) acting as agent(s) of or with the tacit approval of any government or governmental entity, or acting or purporting to act on behalf of any insurgent party, organization or group. A connected series of **Wrongful Detentions** will be considered one **Wrongful Detention**.

#### 4.3.109 Wrongful Managerial Act

means:

- (i) with respect to any **Insured Person**, any matter claimed against an **Insured Person** solely because of his capacity as an **Outside Entity Director** or a **Director or Officer** or any actual or alleged act, error or omission by an **Outside Entity Director** or a **Director or Officer** in his capacity as such.
- (ii) with respect to any **Securities Claim**, any actual, alleged or proposed act, error or omission, breach of duty, breach of trust, misstatement, misleading statement or breach of warranty of authority by an **Insured Entity** or **Fund** or **Insured Person**.

#### 4.3.110 Wrongful Professional Act

any actual or alleged act, error, omission in the performance of or failure to perform **Investment Advisory Services** by:

- (i) any **Insured**;
- (ii) any **Fund**; or

any other person or entity for whom an **Insured Entity** or **Fund** is legally liable.



## 4.4 General Provisions

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### 4.4.1 Terms and Conditions of Each Section

Unless otherwise stated:

- (i) the definitions, terms, conditions and exclusions set out in the General Terms and Conditions Section apply to all Sections; and
- (ii) the terms, conditions and exclusions of the Professional Civil Liability Section, Management Liability Section and Crime Protection Section apply only to each respective Section.

In the case of inconsistency or conflict, the Professional Civil Liability Section, Management Liability Section and Crime Protection Section override the General Terms and Conditions Section.

Coverage is only available for any Section specified as 'Included' in Item 5 of the Schedule.

Any Extension marked as "Not Included" in Item 5 of the Schedule shall not provide cover to the **Insured**.

Any applicable Sub-Limit as per Item 5 shall apply to the Extensions.

### 4.4.2 Changes in Risk during Policy Period

- (i) If during the **Policy Period** a **Transaction** takes place with respect to any **Insured Entity, Plan or Fund** then the cover provided under this policy with respect to such **Fund, Plan or Insured Entity** and any of their respective **Subsidiaries** is amended to apply only to:
  - (a) **Wrongful Professional Acts, Wrongful Managerial Acts, Acts of Infidelity or Third Party Crimes** committed; or
  - (b) a matter which is the subject of an **Investigation**, or any other event covered under Section 1.2 ('Professional Civil Liability Extensions'), Section 2.2 ('Management Liability Extensions') or Section 3.2 ('Crime Protection Section Extensions') of this policy occurring or arising;

prior to the date of the **Transaction**.

The first named **Policyholder** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than 30 days after the effective date of the **Transaction**.

- (ii) This Policy shall only apply to:
  - (a) **Wrongful Professional Acts or Wrongful Managerial Acts, Acts of Infidelity or Third Party Crimes** committed; or
  - (b) matters which are the subject of an **Investigation**, or any other event covered under Section 1.2 ('Professional Civil Liability Extensions'), Section 2.2 ('Management Liability Extensions') or Section 3.2 ('Crime Protection Section Extensions') of this policy occurring or arising,while such entity or fund is an **Insured Entity or Fund** and while such **Insured Person** serves in an **Insured Person** capacity.
- (iii) Cover under Section 3 ('Crime Protection Section') shall cease with respect to any **Employee** of an **Insured Entity, Fund or Plan**, as soon as any **Responsible Person** not in collusion with such **Employee** shall first learn of any **Act of Infidelity** by the **Employee** whenever committed, but without prejudice to the loss of **Property** in transit in the custody of such person at the time the **Responsible Person** shall so learn of such **Act of Infidelity**.
- (iv) Section 3 ('Crime Protection Section') shall cease in respect of any **Service Bureau**:
  - (a) as soon as any **Insured Entity or Fund**, or any of its **Directors or Officers** not in collusion with such person, shall learn of any dishonest, fraudulent or malicious act committed by any partner, director, officer or employee of such **Service Bureau** at any time against the **Insured Entity or Fund** or any other person or entity, without prejudice to the loss of **Property** then in transit in the custody of such person;
  - (b) 15 days after receipt by the first named **Policyholder** of a written notice from the **Insurer** of their desire to cancel cover with respect to such **Service Bureau**.



#### 4.4.3 Limit of Liability

Other than in the case of the **Excess Limit** and Extension 3.2.2 ('Loss Establishment Costs'), and subject to the overall Aggregate **Limit of Liability**, the total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability** irrespective of:

- (a) the number of **Insureds, Claims** or other matters covered under Section 1 ('Professional Civil Liability') or Section 2 ('Management Liability') first arising;
- (b) **Direct Financial Losses Discovered** or other matters covered under Section 3 ('Crime Protection') first arising; or
- (c) **Claims** or other matters covered under Section 1 ('Professional Civil Liability') or Section 2 ('Management Liability Section') which are deemed first made or first arising, during the **Policy Period** or **Discovery Period**.

If a Sub-Limit is specified in the Schedule in respect of any Cover or Extension, the **Insurer** shall have no liability in excess of that Sub Limit for the Cover or Extension. Such Sub-limits shall be part of and not in addition to the **Limit of Liability**, except for Extension 3.2.2 ('Loss Establishment Costs').

The total payment by the **Insurer** with respect to all single related events under all Sections of this Policy combined shall not exceed the **Limit of Liability**.

In the event of the insolvency or the appointment of a receiver, administrator or liquidator to any **Insured Entity** or **Fund** the total aggregate payable under all Sections of this Policy shall not exceed the **Limit of Liability** for any one or more single related events, irrespective of when the **Wrongful Professional Act, Wrongful Managerial Act** or **Direct Financial Loss** or event occurred and irrespective of when the **Insurer** was notified.

#### 4.4.4 Retention

If a **Retention** other than 'Nil' is specified in the Schedule, then the **Insurer** will only pay for any amount which is in excess of the **Retention**.

If more than one **Retention** applies to any related event covered under this Policy, then only the highest **Retention** shall be applied to such related event.

For any **Loss** under Section 2 ('Management Liability'), in no case shall:

- (i) an **Outside Entity Director**; or
- (ii) an **Insured Person**,

be liable to the **Insurer** for the payment of any **Retention**, nor shall the **Insured Entity** or **Fund** be required to pay any **Retention** where it is not able to legally indemnify them.

If any **Insured Entity** or **Fund** is legally permitted or required to indemnify an **Insured Person**, but refuses to or fails to do so within 30 days, the **Insurer** shall advance to the **Insured Person** all such payments within the **Retention** and the **Insured Entity(s)** or **Fund(s)** shall be liable to reimburse the **Insurer**.

If any related event covered under any Cover or Extension is subject to more than one **Retention**, then only the highest **Retention** shall be payable.

#### 4.4.5 Specified Underlying Insurance

This policy shall always apply excess over any other valid and collectible insurance specified in an endorsement to this policy, or any indemnification available to the **Insured** or **Plan** from any other party.

With respect to Extension 2.2.4 ('Lifeboat Protection'), the **Excess Limit** shall apply excess over any other valid and collectible insurance specified in Appendix I ('Underlying Policies') and any policies referred to in the **Submission**, as well as any renewal or replacement thereof.



#### 4.4.6 Notification

The Covers and Extensions provided under this Policy are granted solely with respect to matters covered by the Policy that are notified to the **Insurer** as soon as practicable after the **Insured** becomes aware of such matters or **Direct Financial Loss** is first **Discovered**.

Notification shall be made no later than the end of the **Policy Period** except:

- (i) in respect of Extension 2.2.5 ('Lifetime Run-Off for Retired Insured Persons'); or
- (ii) where the **Policyholder** has elected Extension 4.1.2 ('Discovery Period'), in which case, matters may be notified to the **Insurer** up to the date on which such period ends.

After **Discovery** of a **Direct Financial Loss**, the **Policyholder** shall:

- (a) file detailed proof thereof (which includes but is not limited to a completed proof of **Direct Financial Loss** form in the format agreed by the **Insurer**) with the **Insurer** within 6 months after **Discovery**, or within such further period as agreed to in writing by the **Insurer**; and
- (b) provide all requested information and documents and co-operate with the **Insurer** in all matters pertaining to the **Direct Financial Loss**.

All notifications in accordance with this General Provision must be in writing to the address or email in Item 9 of the Schedule and reference the Policy Number.

If the **Insured** elects not to seek coverage for a **Pre-Claim Inquiry** or a **Derivative Investigation** it will not prejudice the right of the **Insured** to seek coverage for a **Claim** or **Investigation** arising out of the same circumstances provided the **Claim** or **Investigation** is notified in accordance with this provision.

The details of any other insurance policy which may apply to any **Loss** or **Direct Financial Loss** covered under this policy shall be reported to the **Insurer** within a reasonable time of any such notification.

If a notification is made under the notification provisions of this Policy, then all related events shall also be deemed to have been notified to the **Insurer** on the date the notices were first provided.

#### 4.4.7 Notification of a Crisis

The **Policyholder** must notify any **Crisis** to the **Insurer** immediately and during the **Policy Period**. A notice of a **Crisis** will not satisfy the claims notice requirements of General Provision 4.4.6 ('Notification').

All **Crisis** notifications must be in writing or sent by facsimile to the address in Item 10 of the Schedule.

#### 4.4.8 Related Claims or Circumstances

If any **Claim**, **Securities Claim**, **Investigation**, event covered under Section 1 ('Professional Civil Liability Section') or Section 2 ('Management Liability Section') or circumstance is notified under this policy, then any subsequent **Claim**, **Securities Claim**, **Investigation**, event covered under Section 1 ('Professional Civil Liability Section') or Section 2 ('Management Liability Section') alleging, arising out of, based upon or attributable to the facts or **Wrongful Professional Act** or **Wrongful Managerial Act** alleged in that **Claim** or **Securities Claim** or described in that **Investigation**, event or circumstance, shall be deemed to have:

- (i) first been made at the same time as that **Claim** or **Securities Claim** was first made; or
- (ii) first arisen at the same time that **Investigation**, event or circumstance first arose; and
- (iii) notified to the **Insurer** on the date the notices were first provided.



#### 4.4.9 Defence and Settlement of Claims

Each **Insured** shall at their own cost, render all reasonable assistance to and cooperate with the **Insurer**. In the event of any **Claim**, **Securities Claim** or **Discovery**, each **Insured** shall take reasonable steps to mitigate any **Loss** and any **Direct Financial Loss**.

Except as otherwise provided in this clause, the **Insured** shall have the right and duty to defend and contest any **Claim** or **Securities Claim** made against it. The **Insurer** shall be entitled to participate fully defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer** making a payment under the policy.

The **Insurer** consents to the appointment of any **Investment Managers Insurance Advisory Panel** member firm to act on behalf of the **Insured** in respect of any **Claim** defended in accordance with this policy.

The **Insurer** will accept as reasonable and necessary the retention of separate legal representation to the extent required by a conflict of interest between any **Insureds** or **Funds**. For any **Claim** involving the **Insured Entity** or **Fund** as a co-defendant or potential co-defendant, **Insured Persons** and the applicable **Insured Entity** or **Fund** will retain separate legal representation.

If a **Claim** is made against an **Insured Person** by any **Insured Entity** or **Fund**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person**, **Insured Entity** or **Fund** in relation to that **Claim**.

Only those amounts and appointment of advisors, which have been consented to by the **Insurer** (which shall not be unreasonably delayed or withheld) shall be payable by the **Insurer** under this policy unless Extension 4.1.3 ('Emergency Costs') applies.

The applicable **Insured** or the first named **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

#### 4.4.10 Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent (which shall not be unreasonably delayed or withheld) of the **Insurer**. Only liabilities, settlements and judgments resulting from **Claims** defended or other covered matters contested in accordance with this policy shall be recoverable as a **Loss** under this policy.

#### 4.4.11 Allocation

The **Insurer** shall be liable only for payment to the extent it arises from a matter covered by this Policy. If a matter involves both covered and uncovered matters or persons, then the **Insured** and the **Insurer** shall use commercially reasonable efforts to determine a fair and equitable allocation of the quantum covered by this Policy and the quantum not covered by this Policy, on the basis of established judicial allocation principles which take into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

#### 4.4.12 Allocation Disputes

If the **Insurer** and the **Insured** cannot agree on allocation in accordance with General Provision 4.4.11 ('Allocation') within 14 days of any allocation issue first being notified in writing to the **Insured** by the **Insurer**, then the issue will be referred for determination by a **Senior Lawyer**, whose decision shall be final and binding on all parties. The **Senior Lawyer** is to determine the fair and equitable allocation as an expert, not as an arbitrator. The relevant **Insured** and the **Insurer** shall be entitled to make written submissions to the **Senior Lawyer**. The **Senior Lawyer** is to take account of the parties' submissions, but the **Senior Lawyer** is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The **Senior Lawyer's** expenses in providing a determination will be paid by the **Insurer** and any such payments will not erode the **Limit of Liability**.





#### 4.4.13 Subrogation and Cooperation

If the **Insurer** agrees to make payment under this Policy, whether or not the **Insurer** has actually made payment, and even though the value of such payment may not have been determined or that the agreement to make payment may not be absolute and may be subject to further caveats, the **Insurer** may pursue recovery, contribution and indemnity. The **Insurer** may not pursue recovery, contribution and indemnity from any **Insured**, unless that **Insured** has committed an **Act of Infidelity** under Section 3 ('Crime Protection Section') of this Policy; or that **Insured** has committed a deliberately dishonest or fraudulent act established by final adjudication by a judicial or arbitral tribunal or any formal written admission (that has not been withdrawn) by the **Insured** under Section 1 ('Professional Civil Liability Section') and Section 2 ('Management Liability Section'). The **Insurer** shall bear the cost of any such recovery, contribution or indemnity and any such costs shall not erode the **Limit of Liability**. Costs payable by the **Insurer** shall not include remuneration, cost of the time of any **Insured** or costs or overheads of any **Insured**. The **Insured** will provide all reasonable assistance and will do nothing to prejudice the **Insurer's** rights or position with respect to the pursuit of recovery, contribution or indemnity.

In the event of any payment under this Policy, all amounts recovered by the **Insurer** as a result of the exercise of its rights under this 'Subrogation and Cooperation' provision will be distributed as follows:

- (i) to the **Insurer** for any actual costs incurred in seeking the recovery, contribution or indemnity; then
- (ii) to any **Insured** for any actual costs incurred in seeking the recovery, contribution or indemnity; then
- (iii) to the **Insurer** for all amounts paid by the **Insurer** under this Policy, such amount to replenish the applicable **Limit of Liability** correspondingly; then
- (iv) to the **Insured** for all remaining amounts.

#### 4.4.14 Notice and Authority

The first named **Policyholder** shall act on behalf of all **Insureds** with respect to the giving of notice of any matter required under this Policy, the payment of **Premiums** and the receiving of any return premiums that may become due under this Policy, and the receipt and acceptance of any endorsements issued to form a part of this Policy.

#### 4.4.15 Assignment

Neither this policy nor any right under it may be assigned without the written consent of the **Insurer**.

#### 4.4.16 Governing Law

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of the Commonwealth of Australia and the Australian State or Australian Territory in which the policy was issued. Except as otherwise provided herein, the parties will submit to the exclusive jurisdiction of these Australian courts.

#### 4.4.17 Headings and Titles and other References

The descriptions in the headings and titles of this Policy are solely for reference and convenience and do not lend any meaning to this Policy. Words and expressions in the singular shall include the plural and vice versa. In this Policy, words in **bold** typeface shall have special meaning and are defined. Words that are not specifically defined in this Policy have the meaning normally attributed to them. References to legislation shall include any subsequent amendments or re-enactments thereof and the equivalent legislation in other jurisdictions. All references to titles and positions shall mean the equivalent in other jurisdictions. A reference herein to "this Policy" shall mean a reference only to those Insurance Covers and Extension which are shown on the Schedule as "Included".



#### 4.4.18 Cancellation of the Policy

This Policy may not be cancelled by the **Insured** or the **Insurer**. However, the **Insurer** may cancel this Policy for non-payment of premium in accordance with the *Insurance Contracts Act 1984* (Cth) and shall be entitled to retain 20% of the **Premium** plus the pro-rata proportion of the **Premium**.

#### 4.4.19 Confidentiality

The **Insured** shall make all reasonable efforts not to disclose the existence of this Policy to any person except their professional advisers or as required by law or court order. The **Insured** shall only state within the **Insured Entity's** or **Fund's** annual report that the **Insured Entity** or **Fund** has agreed, or otherwise, to pay a premium for this Policy but shall not publish the nature of the liability covered by this Policy, the name of the **Insurer**, the **Limit of Liability** or the premium paid for this Policy.

#### 4.4.20 Sanctions

If, by virtue of any law or regulation which is applicable to the **Insurer**, its parent company or its ultimate controlling entity, at the inception date of this policy or at any time thereafter, providing coverage to any insured individual or entity is or would be unlawful because it breaches an applicable embargo or sanction, the **Insurer** shall provide no coverage and have no liability whatsoever nor provide any defence to the insured individual or entity or make any payment of defence costs or provide any form of security on behalf of the insured individual or entity to the extent that it would be in breach of such embargo or sanction.



## Appendix I – Underlying Policies

*Underlying insurance specified with respect to 2.2.4 ('Lifeboat Protection')*

Insurer	Policy Number	Limit of Liability	Policyholder	Policy Period

## Appendix II – Outside Entity Directorship Schedule

Insurer	Policy Number	Limit of Liability	Outside Entity	Policy Period



## Appendix III – Investment Managers Insurance Advisory Panel Schedule

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### Allens Linklaters

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## Appendix IV – Notification Procedures & Consultants

### What to Do in a Crisis

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#### Response Consultants Services

In the event of an incident, situation or occurrence which may give rise to or constitute an event insured under Extension 3.2.1 (“Kidnap Response”), then as part of the Policy coverage and under a special arrangement with the **Insurer**, NYA International Ltd will make available on a priority basis, specialist **Response Consultants** nominated by the **Insurer** to advise, inform and assist a **Policyholder**.

#### Crisis Hotline

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International Access Code	Country Code	Area Code	Local Number
<b>From Australia 0011</b>	<b>1</b>	<b>817</b>	<b>826 7000</b>

The number above is a dedicated crisis response hotline and should only be used for notification of an incident, situation or occurrence which may give rise to a **Kidnapping, Hijacking, or Wrongful Detention**. Callers will speak directly to or receive an immediate call back from NYA International Ltd’s experienced response consultants who are available to nominate specialist external crisis management or crisis communications consultants or consider any request (to be confirmed in writing) by a **Policyholder** concerning the use of a **Policyholder’s** preferred consultants. Following notification of an incident, situation or occurrence which may give rise to a **Kidnapping, Hijacking, or Wrongful Detention**, the **Response Consultants** will be available to be with a **Policyholder** as soon as travel time permits.

It is understood and agreed that:

- (i) the **Response Consultants** have no authority on behalf of the **Insurer** to make any admissions which may prejudice our rights or to deal with matters concerning policy coverage or the application of any facts and circumstances of any crisis incident, situation or occurrence which has been notified and which may give rise to a **Kidnapping, Hijacking, or Wrongful Detention**; and
- (ii) the provision and/or the use of these services is not intended to be and shall not be regarded as an admission of or an acceptance by the **Insurer** of any liability to indemnify an **Insured** under the Policy and is without prejudice to all of our rights under the terms, conditions and exclusions of the Policy.

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