



Swiss Re
Corporate Solutions

SWISS RE INTERNATIONAL SE – AUSTRALIA BRANCH

EMPLOYMENT PRACTICES LIABILITY

Swiss Re International SE, Australia Branch
Registered Office: Tower Two International Towers,
Level 36, 200 Barangaroo Avenue,
Sydney, NSW 2000, Australia
ABN: 38 138 873 211

Important Notices

Understanding the Policy

You should read the entire **Policy** carefully, including the definitions and the exclusions to ensure that it meets your requirements. We recommend that you consult an insurance adviser to ensure a clear understanding of your rights and obligations under this insurance contract.

Claims Made and Notified Policy

This is a claims made and notified policy which means we shall only cover you for claims made against you during the **Policy Period** and notified to us as soon as practicable during the **Policy Period** or any applicable **Extended Reporting Period**. Except as may be provided by the **Continuity of Cover** provision the **Policy** does not provide cover in relation to facts known to you before the commencement of the **Policy**.

Your duty of disclosure

When you are completing the **Proposal** it is important that you understand that you are answering questions for yourself and anyone else that you want to be covered by the **Policy**.

Before you enter into the **Policy**, you have a duty to tell us anything that you know, or could reasonably be expected to know, which may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate the **Policy**.

You do not need to tell us anything that:

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

If you do not tell us something

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

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

Notification of Facts that might give rise to a claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to us of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of such facts but before the insurance cover provided by the **Policy** expires, then we are not relieved of liability under the **Policy** in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the **Policy**.

Privacy Statement – Privacy Information

We are bound by the Australian Privacy Principles set out under the *Privacy Act 1988* (Cth) when we collect and handle your personal and or sensitive information. We shall only collect personal and or sensitive information that is necessary in order for us to process and administer the **Policy** and any claims made under the **Policy**. Where possible, we shall collect personal information directly from you or, where that is not reasonably practical, from other sources. We may also use your personal and or sensitive information for the purpose of designing or underwriting new insurance products, for research and analytical purposes, to perform administrative functions, and to comply with our legal obligations.

We may disclose your personal and or sensitive information to third parties for the purposes described above, including insurers, reinsurers, reinsurance brokers, loss adjusters, external claims data collectors, investigators and others involved in the claims handling process, agents and service providers and related entities some of whom may be located in overseas countries, including Hong Kong, India, Singapore, Switzerland, the United States of America and the Slovak Republic.

In providing personal and or sensitive information, you consent to the collection, use and disclosure, including overseas disclosure of your personal and or sensitive information for the purposes described above. Where you provide us with personal and or sensitive information about others, you represent to us that you have made them aware of that disclosure and of our privacy policy and that you have obtained their consent.

If you do not consent to provide us with the personal and or sensitive information that we request, or withdraw your consent to the use and disclosure of your personal and or sensitive information at any stage, we may not be able to offer or continue to offer you the products or provide the services that you seek including claims assessment and handling.

We realise that this information is often very sensitive in nature and shall treat it with the utmost care and security. Information on how we handle your personal and or sensitive information is explained in our privacy policy, including:

- What information we collect and how we use it;
- When do we disclose your information overseas;
- How do we hold and protect your information;
- How we disclose the information;
- How you can check, update or change the information we are holding;
- What happens if you wish to complain.

A copy of our privacy policy is available by contacting your broker or available on our website.

corporatesolutions.swissre.com/australia-newzealand

Contact Details

You may seek access to, and correction of, your personal information we hold about you by contacting our Privacy Compliance Officer on (02) 8295 9500 or by writing to:

Privacy Compliance Officer
Swiss Re International SE Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

We shall respond to your request within a reasonable time after we receive it.

Complaint & Dispute Resolution Process

We have Complaints Handling and Dispute Resolution processes in place. We aim to respond to a complaint or to a dispute within 15 business days once we have all necessary information and have completed any investigation that may be needed.

If we cannot respond within 15 business days, we shall let you know as soon as practicable within the 15 business day time frame, and nominate a reasonable alternative time. When doing this we shall attempt where possible to meet any reasonable time requirements you express.

We shall keep you informed about the progress of your complaint or dispute every 10 business days until we have responded to you on it.

Should you wish to make a complaint, you can contact our Complaints Officer on (02 82959500) or by writing to:

The Complaints Manager
Swiss Re International SE, Australia Branch
Level 36, Tower Two, International Towers Sydney
200 Barangaroo Avenue, Sydney NSW 2000
Email: complaints_anz@swissre.com

If you feel our response does not resolve your complaint you may tell us and ask us to treat it as a dispute. It will then be independently reviewed by our Internal Dispute Resolution Panel comprising employees with appropriate experience, knowledge and authority who have not been involved in the matter before.

The General Insurance Code of Practice

We abide by the General Insurance Code of Practice (Code). The Terms of the Code require us to be open, fair and honest in our dealings with you. The Code outlines the standards by which we have agreed to deal with you in relation to the standards for our employees, authorised representatives, financial hardship, information and education and access to information. The Code aims to:

- Commit us to high standards of service.
- Promote more informed relations between you and us.
- Promote trust and confidence in the insurance industry.

LEGAL PANEL

<p>Sparke Helmore Lawyers Roland Hassall, Partner Level 29 MLC Centre 19 Martin Place Sydney NSW 2000 +61 2 9373 3555 Roland.hassall@sparke.com.au</p>	<p>Gilchrist Connell Joel Zyngier, Principal Level 24 North Tower 459 Collins Street Melbourne VIC 3000 +61 3 9044 5032 jzyngier@gclegal.com.au</p>
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SCHEDULE

1. **Policy Number:** <Insert>
2. **Policyholder:** <Company Name>
<Company Number>
3. **Inception Date:** 4.00pm. Local Standard Time, <Date> at the **Policyholder's** principal place of business
4. **Expiry Date:** 4.00pm Local Standard Time, <Date> at the **Policyholder's** principal place of business
5. **Retroactive Date:** <Unlimited> / <Date>
6. **Acquisition Threshold:** <\$ Amount>
7. **Limit of Liability:** <[\$Amount]> each and every **Claim** and in the aggregate
8. **Sub-limits of Liability:**

Section 2: Extensions		Included / Not Included
2.1	Complimentary Legal Advice	Included
2.2	Public Relations and Reputation Costs	<Not Included> / <[\$Amount]>
2.3	Court and Inquiry Attendance Expenses	<Not Included> / <[\$Amount]>
2.4	Continuity of Cover	<Not Included> / <Included>
2.5	Differences in Conditions or Limits	<Not Included> / <Included>
2.6	Recoveries	Included
2.7	Extended Reporting Period	<Not Included> / <Included>
2.8	Extended Reporting Period for a Transaction	<Not Included> / <Included>
2.9	Automatic Cover for New Subsidiaries	<Not Included> / <Included>
2.10	Runoff Cover for Prior Subsidiaries	<Not Included> / <Included>
2.11	Transaction Runoff Cover	<Not Included> / <Included>
2.12	Financial Interest in Covered Entities	Included

Section 3: Optional Extension		Included / Not Included
3.1	Fines and Penalties	<Not Included> / <[\$Amount]>

9. **Retentions:**

Section 1: Insuring Clauses		
1.1	Employee Practice Liability	<[\$Amount]>
1.2	Customer Liability	<[\$Amount]>
1.3	Contractor Liability	<[\$Amount]>
Section 2: Extensions		
2.2	Public Relations and Reputation Expenses	<[\$Amount]>
2.3	Court and Inquiry Attendance Expenses	<[\$Amount]>
Section 3: Optional Extensions		
3.1	Fines and Penalties	<Not Included> / <[\$Amount]>

10. **Jurisdictional Cover:** <Australia Only/ World Wide excluding United States of America its territories and protectorates / Worldwide>
11. **Currency:** <AUD unless otherwise specified>
12. **Premium:** As Agreed
13. **Previous Policy** <Insert details of Policy>
 <Name of Insurer>
 <Type of Policy>
 <Policyholder>
 <Policy Number>
 <Term>

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

Issue Date: 11 February 2020

 Authorised **Employee**

 Authorised **Employee**

EMPLOYMENT PRACTICE LIABILITY INSURANCE POLICY

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PREAMBLE

Subject to payment of the **Premium**, and subject to all the provisions of the **Policy**, and, in reliance upon the disclosures made in the **Proposal**, the **Insured** and the **Insurer** agree as follows:

SECTION 1: INSURING CLAUSES

1.1 Employment Practice Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** for which the **Insured** becomes legally liable to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for an **Employment Practices Wrongful Act**.

1.2 Customer Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** for which the **Insured** becomes legally liable to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** brought by or on behalf of a **Customer** arising from any **Discrimination or Harassment**.

1.3 Contractor Liability

The **Insurer** shall pay for, or on behalf of the **Insured**, **Loss** for which the **Insured** becomes legally liable to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** directly resulting from the conduct of an **Employee** whilst on secondment or providing contracted services that causes a **Third Party Practices Wrongful Act**.

The **Insurer** shall only pay such legal liability to the extent that it is in excess of any indemnification of the **Insured** by any **Third Party**.

SECTION 2: EXTENSIONS

2.1 Complimentary Legal Advice

The **Insurer** has arranged for any **Insured** to receive up to one (1) hour of **Complimentary Legal Advice** from a member of its **Legal Panel** with respect to matters arising under the **Policy** and are accurate as at the date of placement but may be updated from time to time. Please contact the **Insurer** if further information is required.

Contact details for members of the **Legal Panel** are located on page 4 of the **Policy** and are accurate as at the date of placement but may be updated from time to time. Please contact the **Insurer** if further information is required.

2.2 Public Relations and Reputation Expenses

The **Insurer** shall pay for, or on behalf of, the **Insured, Public Relations Expenses and Reputation Expenses** incurred in respect of a covered **Claim**.

2.3 **Court and Inquiry Attendance Expenses**

The **Insurer** shall pay for, or on behalf of, the **Insured, Loss** for which the **Insured** becomes legally liable to pay as a result of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** for **Court and Inquiry Attendance Expenses** incurred by an **Employee** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding covered under the **Policy**.

2.4 **Continuity of Cover**

Notwithstanding Exclusion 4.2 (b) and (d) - Prior or Pending Matters, the **Insurer** shall pay for, or on behalf of, the **Insured, Loss** or other costs payable by the **Insured** resulting from facts or circumstances which were known to the **Insured** but notified to the **Insurer** after the **Inception Date**, provided that:

- (a) such facts or circumstances were not notified under any earlier insurance policy;
- (b) such facts or circumstances did not constitute a **Claim** as at the **Inception Date**;
- (c) the **Insured** demonstrates to the satisfaction of the **Insurer** that the failure to notify was innocent and inadvertent as at the **Inception Date**; and
- (d) the **Insured** has continuously held a comparable Employment Practices Liability Policy issued by the **Insurer** since the **Insured** first became aware of such facts or circumstances.

The cover provided by this Extension shall not result in any payment greater than the amount that would have been paid under the earliest policy to which the notification could have been made, after deduction of any payments that have been made, could reasonably be expected to have been made, and would have been made had all notifications been made when the facts or circumstances were first known to the **Insured** and could have been notified to the earlier policy. Any limit of liability applying to that policy is part of, and not in addition to, the **Limit of Liability** of the **Policy** and any amount paid under this Extension shall erode the **Limit of Liability** and **Sub-Limits of Liability**. The **Insurer** may reduce its liability to the extent of any prejudice suffered in connection with the failure to notify such facts or circumstances.

2.5 **Difference in Conditions or Limits**

If the **Insurer** is not liable under the **Policy**, but cover would have been available to any **Insured** under a **Previous Policy** had that policy remained in force, then the **Policy** shall provide cover in accordance with the **Previous Policy**, provided that the:

- (a) cover is not excluded under any endorsement to the **Policy**;
- (b) **Insured** is subject to and pays the amount of the most comparable **Retention**; and
- (c) cover is not dependent upon the application of a difference in conditions provision in the **Previous Policy** or upon the terms of any other insurance policy.

In the event of any overlap in the provision of cover this **Policy** shall operate as excess of the **Previous Policy**.

2.6 Recoveries

Any amounts recovered by the **Insurer** or the **Insured** in connection with a payment under the **Policy** will be distributed in order of priority as follows:

- (a) firstly, in satisfaction of reasonable legal costs incurred in effecting a recovery, regardless of whether the **Insurer** or **Insured** incurred such recovery costs;
- (b) secondly, to the **Insured** for sums exceeding the **Limit of Liability**, to the extent that such sums would have otherwise been covered under the **Policy**;
- (c) thirdly, to the **Insurer** for all amounts paid by the **Insurer** under the **Policy**;
- (d) fourthly, to the **Insured** in satisfaction of the applicable **Retention**; and
- (e) lastly, to the **Insured** for any amounts in excess of the total amount paid by the **Insurer** under the **Policy**.

2.7 Extended Reporting Period

The **Insurer** agrees that the **Insured** may notify a **Claim** during the **Policy Period** or within ninety (90) days after the **Expiry Date**; provided that such **Claim** was first made against the **Insured** before the **Expiry Date** or the **Insured** first became aware of such fact or circumstance that may give rise to a **Claim** before the **Expiry Date**.

If the **Policy** is neither renewed nor replaced, the **Insured** shall be entitled, upon payment of the additional premium amount described below, to an **Extended Reporting Period**.

The additional premium amount for one year shall be one hundred (100%) per cent of the previous annual premium and shall be fully earned upon inception of the **Extended Reporting Period**.

The rights available pursuant to this Extension shall terminate unless written notice by any **Insured** of election of an **Extended Reporting Period**, together with the additional premium due, is received by the **Insurer** no later than thirty (30) days after the **Expiry Date**.

The exercise of any applicable **Extended Reporting Period** shall not in any way increase the **Limit of Liability** of the **Policy**.

2.8 **Extended Reporting Period for a Transaction**

In the event of a **Transaction**, the **Insured** shall have no right of notification under Extension 2.7 –Extended Reporting Period; however any **Insured** may request the **Insurer** to offer an **Extended Reporting Period** with respect to **Wrongful Acts** occurring prior to the effective time of the **Transaction**. The **Insurer** may offer such **Extended Reporting Period** pursuant to such terms, conditions and additional premium as the **Insurer** may reasonably require. In the event of a **Transaction**, the right to an **Extended Reporting Period** shall not otherwise exist except as provided for by the Extension.

The exercise of any applicable **Extended Reporting Period** shall not in any way increase the **Limit of Liability** of the **Policy**.

2.9 **Automatic Cover for New Subsidiaries**

If, during the **Policy Period**, the **Insured** acquires voting securities in another entity or creates another entity which as a result of such acquisition or creation becomes a **Subsidiary**, then, subject to the provisions of the **Policy** including the provisions of this Extension, such entity shall be covered under the **Policy** but only with respect to **Wrongful Acts** taking place after such acquisition or creation.

If the total assets of such acquired or created entity exceeds the **Acquisition Threshold**, coverage shall be provided for such acquired or created entity for a period of ninety (90) days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, and shall terminate at that time. Further coverage may be offered to the **Policyholder** beyond this period pursuant to such terms, conditions and additional premium as the **Insurer** may reasonably require.

2.10 **Run off Cover for Prior Subsidiaries**

If, during the **Policy Period**, a **Subsidiary** ceases to be a **Subsidiary** of the **Insured**, then coverage under the **Policy** shall continue to apply in full force and effect until the end of the **Policy Period** or any applicable **Extended Reporting Period** with respect to **Wrongful Acts** which were committed, or allegedly committed, whilst the entity was a **Subsidiary** and before it ceased to be a **Subsidiary**, provided that no other insurance is available to respond to the **Claim**.

2.11 **Transaction Runoff Cover**

If, during the **Policy Period** there is a **Transaction**, coverage under the **Policy** shall continue in full force and effect until termination of the **Policy**, but only with respect to **Wrongful Acts** which were first committed, or allegedly committed, before the effective date of the **Transaction**.

2.12 Financial Interest in Covered Entities

The **Insurer** shall make best efforts to reimburse the **Policyholder** for its **Financial Interest** if the **Policyholder** has suffered loss due to the **Insurer** being prevented from making a payment under the **Policy** to an **Insured** solely because the **Insureds** claim under the **Policy** has been brought in a **Non-Admitted Jurisdiction**. This is provided that:

- (a) matters known to the **Insured** are deemed to be known to the **Policyholder**;
- (b) the **Policyholder** and the **Insured** comply with all the provisions and requirements of the **Policy**; and
- (c) the total reimbursed under this Extension shall be calculated as the equivalent of the payment the **Insurer** had been prevented from paying to the **Insured** and shall fully release the **Insurer** from any further payments of such amounts.

SECTION 3: OPTIONAL EXTENSIONS

3.1 Fines and Penalties

The **Insurer** shall pay for, or on behalf of the **Insured**, fines or penalties that arise directly from a **Claim**, provided that such fines or penalties are insurable at law and do not arise out of or are not in any way connected with **Fraud or Dishonesty**.

SECTION 4: EXCLUSIONS

No cover shall be provided under the **Policy** for, arising out of, or in any way connected with:

4.1 Conduct

any deliberately dishonest or fraudulent act or omission including any intentional violation or breach of any law or regulation by an **Insured** as established through a final non-appealable adjudication or proceeding by a judicial or arbitral tribunal.

4.2 Prior or Pending Matters

- (a) any **Claim** made, threatened or intimated against the **Insured** prior to the **Inception Date**;
- (b) any fact or circumstance of which notice has been given, or could have been given, under any earlier insurance policy;
- (c) any fact or circumstance of which the **Insured** first became aware prior to the **Inception Date** and which the **Insured** knew or should reasonably have known had the potential to give rise to a **Claim**; or
- (d) any **Wrongful Act** committed, or alleged to have been committed, prior to the **Retroactive Date**.

4.3 **Certain Employment Conduct**

any industrial dispute, strike, lockout, picket, enterprise bargaining, or similar industrial relations matters.

4.4 **Superannuation Trustee**

liability of any trustee of a superannuation fund or other fund or plan established for the benefit of **Employees**.

4.5 **Uninsurable Amounts**

amounts which are uninsurable at law.

4.6 **Bodily Injury and Property Damage**

for bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person or damage to or destruction of any tangible property including loss of use. However, this Exclusion shall not apply to **Claims** for emotional distress or mental anguish.

4.7 **Outstanding Remuneration**

- (a) underpayment of any statute, award, or other instrument by the **Insured** which provides for the remuneration, entitlement or any other benefit of employment of an **Employee**, or
- (b) any arrangement which requires an **Employee** to pay any amount or to forgo any entitlement to the **Insured** which is found to be unlawful and for which the **Insured** is legally liable.

SECTION 5: CLAIMS CONDITIONS

5.1 **Reporting and Notice**

As soon as reasonably practicable and in no event later than the **Expiry Date** or any applicable **Extended Reporting Period**, the **Insured** shall give written notice to the **Insurer** of any **Claim** or claim for any other matter covered under the **Policy**. Such notice shall be provided irrespective of whether or not any potential or actual amount payable under the **Policy** may fall within the **Retention**.

All such notices shall include, but not be limited to, the following:

- (a) a detailed description of the subject matter of the **Claim** or claim for any other matter covered under the **Policy**;
- (b) details of all the parties involved;
- (c) the nature of the alleged or potential loss;
- (d) the manner and date upon which the **Insured** first became aware of the matters giving rise to the notification;

- (e) a copy of the **Claim** or any written demand or written notice; and
- (f) a copy of any other insurance policy that may be applicable.

Notice and all information shall be sent in writing to:

The Claims Manager

Swiss Re International SE Australia Branch

Tower Two International Towers

Level 36, 200 Barangaroo Avenue,

Sydney, NSW 2000, Australia

Email: ClaimsANZ_CorporateSolutions@swissre.com

The **Insured** shall keep the **Insurer** fully informed as regards all developments relating to such **Loss** or claim for any other amount covered under the **Policy** as soon as reasonably practicable.

5.2 **Defence and Settlement**

The **Insured** agrees not to settle any **Claim**, incur any costs and expenses, make any admission, offer or pay or otherwise assume any obligation with respect to any **Claim** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed. The **Insurer** will not be liable for any **Claim**, settlement, costs and expenses, admission, offer or payment, assumed obligation, or claim for any other matter covered under the **Policy** to which it has not consented. The **Insurer** shall be entitled to associate with the **Insured** in the defence and negotiation of any settlement of any **Claim**.

The **Insured** shall have the obligation to defend and contest any **Claim** made against them.

The **Insurer** agrees to the appointment of any solicitor or firm of solicitors that is a member of the **Insurer's Legal Panel** to act on behalf of the **Insured**.

Each **Insured** agrees to and shall render all reasonable assistance to and fully cooperate with the **Insurer** in the investigation, defence, settlement, or appeal of a **Claim**, circumstance, or claim for any other amount covered under the **Policy**, and provide the **Insurer** with all relevant information pertaining to those matters as the **Insurer** may reasonably require. In the event of any **Claim**, each **Insured** shall take reasonable steps to minimise or reduce any **Loss**.

5.3 **Right to Contest**

If the **Insured** or **Insurer** wishes to settle the **Claim** and the other wishes to contest the **Claim**, then the **Insured** may elect to have a **Senior Counsel** appointed to advise the parties as to whether such **Claim** should be settled or contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, including the damages and costs that may be payable, the likely **Defence Costs** and the prospects of the **Insured** successfully challenging the **Claim**. The cost of such **Senior Counsel's** opinion shall be regarded as part of the **Limit of Liability**.

In the event that the **Insurer** recommends settlement and, if elected, the appointed **Senior Counsel** has advised the parties to settle, in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**. The **Insurer's** liability in connection with such **Claim** shall not exceed the amount for which such **Claim** could have been so settled or could reasonably have been expected to be settled plus the **Defence Costs** incurred with the **Insurer's** prior written consent up to the date of such election.

5.4 **Advancement of Defence and Other Costs**

Once the **Insurer** has received written notice of a **Claim** under the **Policy**, it shall advance **Defence Costs** and other costs payable by the **Insured** as and when incurred, but no later than thirty (30) days after the **Insurer** has received itemised bills for those **Defence Costs**. Such payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured**, in the event and to the extent that the **Insured** is not entitled under the **Policy** to payment of such **Loss**.

5.5 **Subrogation**

In the event of any payment under the **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall do everything necessary to secure and preserve such rights, including but not limited to the execution of documents necessary to enable the **Insurer** to effectively commence any action in the name of the **Insured**.

The **Insured** must not do anything to prejudice the position of the **Insurer** in its actual or potential rights of recovery against another party.

5.6 **Consent to Payments**

The **Insured** shall obtain the written consent of the **Insurer**, which shall not be unreasonably withheld or delayed, before any amounts payable under the **Policy** are incurred.

The **Insurer** shall only be liable under the **Policy** for payment of any **Costs and Expenses** or any other amounts which are reasonable and necessary.

5.7 **Allocation**

If a **Claim** or any other matter is partially covered under the **Policy**, the **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between such covered matters and not-covered matters based upon the relative legal and financial exposures and the relative benefits obtained by the parties.

If the **Insurer** and the **Insured** cannot agree on allocation within thirty (30) days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, they agree to refer the determination to a **Senior Counsel**. The **Senior Counsel** is to determine the fair and proper allocation as an expert not an arbitrator. The **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be confined by such submissions and is to determine the fair and proper

allocation in accordance with their own judgement and opinion. The **Senior Counsel's** expenses in providing such determination shall be paid by the Insurer and any such payments shall not erode the **Limit of Liability**.

Whilst a dispute as to allocation of any matter claimed under the **Policy** remains unresolved, the **Insurer** shall advance such amounts it considers to be a fair and proper allocation. The allocation finally agreed or determined shall be applied retrospectively to any amounts incurred or paid.

SECTION 6: GENERAL CONDITIONS

6.1 Limit of Liability

The **Insurer's** maximum liability under the **Policy** for any one **Claim** will not exceed the **Limit of Liability**. Further, **Costs and Expenses** and any cover granted under any Insuring Clause, Extension, Optional Extension or Endorsement are subject to the **Limit of Liability** or **Sub-Limit of Liability**. Such amounts will form part of and do not increase the **Limit of Liability** unless otherwise specifically stated in the **Policy**.

6.2 Retentions

The **Insurer** shall only be liable for any amount covered under the **Policy** in excess of the applicable **Retention**. The **Retention** shall remain uninsured.

If different parts of a single **Claim** are subject to different **Retentions**, the applicable **Retentions** will be applied separately to each part of such **Claim**, but the sum of such **Retentions** shall not exceed the highest applicable **Retention**.

In the case of any **Related Claims and Related Inquiries**, the highest **Retention** applicable to any **Claim** constituting a **Related Claims and Related Inquiries** shall be deemed the **Retention** applicable to all **Loss** arising from such **Related Claims and Related Inquiries** the **Policy** expressly provides otherwise.

6.3 Other Insurance

The insurance provided by the **Policy** is excess over any other valid and collectible insurance, including any Employment Practices Liability policy, unless such other insurance is specifically written as excess insurance over the **Limit of Liability** provided by the **Policy**. The **Policy** shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer may be obligated to pay.

6.4 Multiple Claims

All causally connected or interrelated **Wrongful Acts**, errors or omissions shall jointly constitute a single act, error or omission under the **Policy**. All such acts, errors or omissions shall be treated as having occurred at the time of the first of such acts, errors or omissions occurred.

Where a single act, error or omission gives rise to more than one **Claim**, all such **Claims and Inquiries** shall jointly constitute one **Claim** under the **Policy**, and only

one **Retention** and one **Limit of Liability** shall be applicable in respect of such **Claims** and **Inquiries**.

6.5 **Cancellation**

In the event that any **Premium** due under the **Policy** is not received by the **Insurer** within ninety (90) days of the **Inception Date** the **Policy** may be cancelled or avoided by the **Insurer**.

The **Policyholder** may cancel the **Policy** at any time by giving thirty (30) days written notice to the **Insurer**.

6.6 **Authorisation**

By acceptance of the **Policy**, the **Policyholder** agrees to act on behalf of each and every **Insured** with respect to any matters pertaining to the **Policy**, including but not limited to the giving of notice of a **Claim** or circumstance, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under the **Policy**, and the negotiation, agreement to and acceptance of any endorsements issued to form part of the **Policy** and the exercising or declining of any rights to any applicable **Extended Reporting Period** and each of the other **Insured** agree that the **Policyholder** shall so act on their behalf.

This Condition shall not limit the ability of any other **Insured** to provide notice of a **Claim** or circumstance.

6.7 **Premium**

The **Insured** agrees that twenty (20%) per cent of the **Premium** and any adjusted **Premium** shall be fully earned on inception and that the balance of the **Premium** shall be prorated in the event that the **Policy** is cancelled by the **Policyholder**. Further, the **Premium** shall be fully earned in the event of any notification that may give rise to any payment under the **Policy**.

6.8 **Joint Insureds**

Where the **Insured** comprises more than one party, information supplied to the **Insurer** shall be deemed to have been furnished by and on behalf of all such parties and any information supplied to the **Insurer** or any omission or non-disclosure in relation to any renewal or extension hereof, shall likewise be deemed to have been furnished, omitted or withheld on behalf of all such parties.

6.9 **Alteration to Risk**

The **Insured** shall give to the **Insurer** written notice as soon as practicable of any material alteration to the risk during the **Policy Period** including but not limited to:

- (a) the **Insured** being unable to pay its debts as and when they fall due; and

- (b) the **Insured** acquiring another organisation or being acquired by another organisation.

In the event of material alteration to the risk during the **Policy Period** the **Insurer** reserves the right to impose additional terms and conditions and to charge an additional premium.

6.10 **Jurisdictional Cover**

The coverage provided under the **Policy** shall extend to any **Claim** brought in a court of law in the countries stated under **Jurisdictional Cover** and **Claims** or **Inquiries** arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the countries stated under **Jurisdictional Cover**.

Notwithstanding anything to the contrary in this **Policy**, no cover shall be provided where to do so would constitute a breach by the **Insurer** of any economic, trade or other sanction or law applicable to the **Insurer** including pursuant to the laws or regulations of Australia, the European Union, United Kingdom, Singapore or the United States or a resolution of the United Nations and the **Insurer** shall have no liability to the **Insured** to the extent that to do so would be in breach of the foregoing.

6.11 **Governing Law**

The construction, interpretation and meaning of the provisions of the **Policy** shall be determined in accordance with the law in force in the Australian State or Territory in which the **Policy** is issued. All matters relating to the construction or operation of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

6.12 **Policy Construction and Interpretation**

The headings in the **Policy** are included for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or interpretation.

Under the **Policy**, where appropriate, the masculine includes the feminine, and the singular includes the plural and vice versa. For the meaning of any words in bold refer to the Schedule or to Section 7 – Definitions.

6.13 **Electronic Communications**

The **Insurer** may issue notices to the **Insured** which are required to be given pursuant to the *Insurance Contracts Act 1984* (Cth) by electronic mail or post.

6.14 **Confidentiality**

The existence and terms of the **Policy** are confidential as between the **Insured** and the **Insurer** and shall not be disclosed by the **Insured** to any person except:

- (a) to professional advisers including legal advisers and accountants;

- (b) as required by law or in accordance with an order of a court;
- (c) with the written consent of the **Insurer**.

6.15 **Currency**

All **Premiums**, limits, **Retentions**, **Loss** or other amounts under the **Policy** are expressed and payable in the **Currency** stated in Item 10 of the **Schedule**. If a payment under the **Policy** is to be made in a **Currency** other than that **Currency**, then such payment shall be made at a rate of exchange as published in the Australian Financial Review on the date the obligation to pay **Loss** is established or, if not published on that date, on the date of the next publication of the Australian Financial Review.

SECTION 7: DEFINITIONS

7.1 **Claim** means any:

- (a) written demand for compensation including for non-monetary compensation, mediation, arbitration or any other alternative dispute resolution procedure; or
- (b) civil, regulatory or administrative proceeding;

for, or alleging, a **Wrongful Act**.

7.2 **Court and Inquiry Attendance Expenses** means an allowance of \$500 per day for any **Employee** whose attendance is required as a witness, or is otherwise necessary, at any legal proceeding or civil, regulatory or administrative proceeding.

7.3 **Complimentary Legal Advice** means legal advice regarding Australian law provided by a member of the **Legal Panel** at no charge for up to a maximum of one (1) hour per enquiry to any **Insured** during the **Policy Period** with respect to any factual or legal matter arising from or in connection with the subject matter of the **Policy**.

7.4 **Customer** means any natural person who is a customer or client of the **Insured**.

7.5 **Defence Costs** means the fees and expenses incurred by or on behalf of the **Insured** in the defence, adjustment, settlement or appeal of any covered **Claim** against the **Insured**. This shall include the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee the **Insured's** contingent obligation for a specified amount required by a court of competent jurisdiction hearing a **Claim**.

Defence Costs shall not include wages, salaries, fees or other compensation of any **Employee**.

7.6 **Discovered or Discovery** means the moment in time when the chief executive officer, chief financial officer, general counsel, risk manager, human resources manager or any equivalent executive of the **Insured** becomes aware of a **Claim** of

a type covered under the **Policy**, even if the exact amount or details of **Claim** may not then be known.

7.7 **Discrimination or Harassment** means:

- (a) sexual harassment including unwelcome sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature that is made a condition of employment or used as a basis for an employment decision or creates a hostile work environment;
- (b) harassment of any kind including the alleged creation or condoning of a harassing workplace environment;
- (c) unlawful discrimination including but not limited to sexual, racial, religious or age discrimination; or
- (d) victimisation on any unlawful basis.

7.8 **Employee** means any natural person employed under a contract or apprenticeship with the **Insured** and includes full-time, part-time, seasonal and temporary employees and agency staff under the direction and control of the **Insured**.

7.9 **Employment Practices Wrongful Act** means any actual or alleged:

- (a) **Discrimination or Harassment;**
- (b) unfair, harsh, unreasonable, unjust or unlawful dismissal or termination of employment, either actual or constructive, for which a statutory remedy exists or allegedly exists;
- (c) breach of contract of employment;
- (d) misleading or deceptive representation or advertising relating to employment;
- (e) failure to employ or promote, unfair deprivation of a career opportunity, unfair discipline, failure to grant tenure or negligent employee evaluation; or
- (f) employment related:
 - (i) denial of natural justice;
 - (ii) unlawful interference with privacy;
 - (iii) defamation;
 - (iv) emotional distress, mental anguish or humiliation; or
 - (v) retaliation;

committed or allegedly committed against an **Employee** in respect of the past, present, or prospective employment of that **Employee** with the **Insured**.

- 7.10 **Extended Reporting Period** means the period provided by Extension 2.7 –Extended Reporting Period during which the **Insured** may give notice of a **Claim** or circumstance after the **Expiry Date**, provided that such **Claim**, was first made against, or notified to, the **Insured** before the **Expiry Date**, or the **Insured** first became aware of such fact or circumstance that may give rise to a such **Claim** before the **Expiry Date**.
- 7.11 **Financial Interest** means the direct or indirect financial interest of the **Policyholder** in an **Insured**.
- 7.12 **Fraud or Dishonesty** means any actual or alleged:
- (a) fraudulent, criminal or malicious act, error or omission; or
 - (b) intentional or wilful breach of any statute, law or regulation, contract or duty,
- of any **Insured**.
- 7.13 **Insured** means the **Policyholder** and each **Subsidiary**.
- 7.14 **Insurer** means:
- Swiss Re International SE Australia Branch,
Registered Office: Tower Two International Towers,
Level 36, 200 Barangaroo Avenue,
Sydney, NSW 2000, Australia
AFSL 355088 - ABN 38 138 873 211
- 7.15 **Loss** means any amount the **Insured** is legally liable to pay as a result of any single **Wrongful Act** or single event, or a series of related or continuous acts or events.
- Loss** shall not include:
- (a) employment related benefits including retirement, health, profit sharing, incentive or welfare plans or arrangements;
 - (b) remuneration, wages, salaries, bonuses, fees or other amounts or entitlements payable to any **Employee** or director of the **Insured**;
 - (c) any order by a court or obligation howsoever arising to provide to non-pecuniary items or benefits including but not limited to corporate training of any sort, alteration to buildings or workplaces, external education programs, mentoring, time in lieu or reduced hours;
 - (d) internal costs or overheads of the **Insured**;
 - (e) fines and penalties except as expressly provided for; or

- (f) taxes, except GST for which the **Insured** is not entitled to an Input Tax Credit.
- 7.16 **Non-Admitted Jurisdiction** means any jurisdiction that does not permit the **Insured** to be covered by the **Policy** because the **Insurer** is not registered or authorised as an insurer to do so in that jurisdiction.
- 7.17 **Policy** means the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions, Endorsements and any other terms contained or incorporated herein.
- Policy** does not include any Section, Optional Extension or any other part of the **Policy** that has not been purchased by the **Insured**.
- 7.18 **Policy Period** means the period from **Inception Date** to the **Expiry Date** or to any earlier cancellation of cover.
- 7.19 **Premium** means the amount of money that the **Policyholder** must pay the **Insurer** for the **Policy**. The **Premium** shall include any premium adjustments required to be paid to the **Insurer**.
- 7.20 **Proposal** means any proposal form completed and signed for the **Policy** or for any other policy issued by the **Insurer** for which the **Policy** is a replacement or renewal (including any attachments thereto) and any information and statements or materials requested by the **Insurer** or supplied to the **Insurer** by or on behalf of the **Insured** included therewith or incorporated therein.
- 7.21 **Public Relations and Reputation Expenses** means the fees and related expenses of a public relations firm or consultant, crisis management firm or law firm which the **Insured** may engage in order:
- (a) to prevent or limit adverse effects of any negative publicity which has arisen from any **Loss**; or
- (b) to disseminate the findings of a final adjudication in favour of the **Insured** arising from a **Loss** in which there has been negative publicity.
- 7.22 **Related Claims and Related Inquiries** means any **Claims** or **Inquiries** or other matters covered under the **Policy** which are causally connected or which arise from any interrelated **Wrongful Act**, error or omission.
- 7.23 **Schedule** means the schedule attached to the **Policy** and signed by two people authorised by the **Insurer**.
- 7.24 **Senior Counsel** means a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the President/Chair of the Bar Association, Law Society or equivalent organisation in the jurisdiction in which the **Policy** is issued.
- 7.25 **Subsidiary** means any entity in which the **Policyholder**, on or before the **Inception Date**, either directly or indirectly through one or more of its other **Subsidiaries**:
- (a) has control of the composition of the board of directors;

- (b) has control of more than half of the shareholder or equity voting power;
- (c) holds more than half of the issued share capital or equity; or
- (d) exercises effective control of management, including of any joint venture.

7.26 **Third Party** means a business that is not an **Insured**.

7.27 **Third Party Practices Wrongful Act** means any actual or alleged:

- (a) **Discrimination or Harassment;**
- (b) unfair, harsh, unreasonable, unjust or unlawful dismissal or termination of employment, either actual or constructive, for which a statutory remedy exists or allegedly exists;
- (c) breach of contract of employment;
- (d) misleading or deceptive representation or advertising relating to employment;
- (e) failure to employ or promote, unfair deprivation of a career opportunity, unfair discipline, failure to grant tenure or negligent employee evaluation; or
- (f) employment related:
 - (vi) denial of natural justice;
 - (vii) unlawful interference with privacy;
 - (viii) defamation;
 - (ix) emotional distress, mental anguish or humiliation; or
 - (x) retaliation.

committed or allegedly committed by an **Employee** whilst acting as a secondee or contractor to a **Third Party** and brought by or on behalf of a past, present, or prospective employee of the **Third Party**.

7.28 **Transaction** means:

- (a) the **Policyholder** consolidating with or merging into another entity such that the **Policyholder** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (b) any person or entity or group of persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) becoming entitled to cast, or control the casting of, more than fifty per cent (50%) of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**.

7.29 **Wrongful Act** means:

- (a) an **Employment Practices Wrongful Act**; or
- (b) a **Third Party Wrongful Act**.