

Statutory Liability

Policy wording





IMPORTANT NOTICES

Claims Made Insurance

This policy is issued by Delta Insurance Australia Pty Ltd ('Delta', 'we', 'our' or 'us') on a claims made and notified basis. Accordingly, this policy will only apply to claims first made during the policy period or extended reporting period, if applicable, and notified to Delta in writing during the policy period or extended reporting period, if applicable. This policy may not provide cover for any claims or events made against you during the policy period if at any time prior to the commencement of the policy period 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) applies to this type of policy. It provides that where the insured becomes aware of any facts that might give rise to a claim against the insured, provided that the insured notifies the insurer in writing of those facts as soon as reasonably practicable after the insured becomes aware of those facts before the policy period expires, the insurer is not relieved of liability under the contract in respect of a claim which arises out of those facts, merely because when the claim is made, it is made after the policy period has expired.

Insured's Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into an insurance contract, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to insure to you. You have the same duty to disclose before you renew, extend, vary or reinstate an insurance contract.

However, you do not need to tell the insurer anything that:

- reduces the risk the insurer insures you for; or
- is common knowledge; or
- your insurer knows or should know as an insurer; or
- the insurer waives your duty to tell them about.

If you do not tell the Insurer something

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

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

Unusual terms

Please read General Condition 1 and 2 (together with your schedule) carefully as these sections detail the limit of liability.

This policy has an individual limit of liability as specified in the schedule (which is an aggregate amount). As this policy can be purchased as part of a package of policies, this policy is also subject to a combined policy aggregate limit of liability. The combined policy aggregate limit of liability is the maximum amount that the Insurer will pay for all loss payable under all the policies you have purchased from the Insurer.

The limit of liability for this policy is a sub-limit of the combined policy aggregate limit of liability (and is not in addition to it). Once the limit of liability for each individual policy is exhausted then then the Insurer will have no liability in excess of that limit of liability even if the combined policy aggregate limit of liability has not been exhausted.

Once the combined policy aggregate limit of liability has been exhausted this will mean that no further Loss is payable by the Insurer even if individual limit of liability for a particular policy (including this one) has not been exhausted. If you have any questions about this then please contact your broker.

Please also note General Condition 5.13, which prevents the insurer from providing cover, benefits or paying claims where that would expose the Insurer to sanctions, prohibitions or restrictions.

Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (Privacy Act). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to

assist with assessing your risk in order to provide the insurance that you are applying for.

Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse and Loss and from unauthorised access, modification, or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, Claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

Complaints

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in

the insurance industry. Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces Insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

If you have any concerns or wish to make a complaint in relation to this policy, our services, or your insurance Claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance Australia Pty Ltd in the first instance:

Managing Director
Delta Insurance Australia Pty Ltd
Email: complaints@deltainsurance.com.au
Telephone: 07 3017 4720
Post: GPO BOX 1832, Brisbane, QLD, 4001, Australia

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place,
Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply. You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Goods and Services Tax (GST)

Where you are registered for GST, you must tell Delta the nature and extent of any entitlement you have to an input tax credit at or before the time a Claim is made under this Policy. Where the Insurer makes a payment under this Policy, the amount of the payment will be reduced by the amount of any input tax credit to which you are or may, in the opinion of the Insurer, be entitled to Claim.

The amount of the applicable Retention is calculated after deduction of the amount of any input tax credit that you are or may, in opinion of the Insurer be entitled to Claim. The Insurer will not be liable to pay any GST, or any fine, penalty or charge that you may be liable for arising from your misrepresentation of or failure to disclose the proper input tax credit entitlement on the premium relating to this Policy.

GST and 'input tax credit' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Interpretation

The definitions can be found in Section F of this Policy. Defined words appear in bold print. Reference to:

- the singular includes the plural and vice versa;

- the masculine includes the feminine and vice versa;
- a statute, statutory instrument, regulation or order includes any amendment, superseding, substitution, replacement or re-enactment of that statute, statutory instrument, regulation or order. References to any statute, statutory instrument, regulation or order shall also refer to such statute, statutory instrument, regulation or order commencing after the date of this Policy which contain similar subject matter to the statute, statutory instrument, regulation or order referred to in this Policy, regardless of whether the statute, statutory instrument, regulation or order is expressed or intended to supersede, substitute or replace the relevant statute, statutory instrument, regulation or order;
- any reference to a "person" (but not a "natural person") includes a natural person, entity or organisation.

Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses and discloses your information, please read our privacy policy located at www.deltainsurance.com.au or alternatively you can contact us at (07) 3017 4720.

THIS POLICY SETS OUT THE TERMS UPON WHICH THE INSURER AGREES TO INSURE THE INSURED IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM. THE INSURING CLAUSES AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.

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STATUTORY LIABILITY COVERAGE SECTION

In consideration of the payment of the **Premium**, and subject to the **Conditions**, the **Insurer**, and the **Policyholder** on behalf of all **Insureds** agree as follows:

1. INSURING CLAUSES

1.1 Statutory Liability

The **Insurer** will pay on behalf of the **Insured** any **Loss** resulting from a **Claim** first made against the **Insured** during the **Policy Period** arising out of a **Wrongful Act**.

2. AUTOMATIC EXTENSIONS

2.1 Continuous Cover

This policy extends cover for the **Loss** resulting from any **Claim** arising out of, based upon or attributable to a **Circumstance** which:

- a. could have been, but was not, notified by the **Insured** under any **Prior Policy**; and
- b. is first notified to the **Insurer** during the **Policy Period**.

Provided that for this cover to apply:

- i. the failure by the **Insured** to notify such **Circumstance** under such **Prior Policy** was not fraudulent; and
- ii. the **Insurer** has the discretion to apply either the conditions or the terms and conditions of such **Prior Policy** in effect when the **Circumstance** first arose; and
- iii. the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Insurer** as a result of the **Insured's** failure to notify such **Circumstance** under such **prior policy**; and
- iv. the resulting **Claim** arises out of a **Wrongful Act**.

3. EXCLUSIONS

The **Insurer** will not be liable to make any payment under this policy for that part of any **Loss**:

APPLICABLE TO ALL INSURING CLAUSES AND AUTOMATIC EXTENSIONS

3.1 Property damage

resulting from any **Claim** for actual or alleged damage to, destruction, impairment, or loss of use of any property.

3.2 Prior Claims and Circumstances

arising out of, based upon or attributable to:

- a. any **Claim, Circumstance** or **Wrongful Act** of which notice has been given under any policy in relation to which this policy is a renewal or replacement or any matter which taken together with such **Claim, Circumstance** or **Wrongful Act** would constitute a **Single Event**; or
- b. any prior or pending litigation, arbitration, administrative or regulatory proceeding which was brought against the **Insured** prior to the **Pending and Prior Litigation Date**.

This Exclusion will not apply to facts or **Circumstances** which have been notified to the **Insurer** after the **Continuity Date** but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer**.

3.3 Conduct

brought about or contributed to by any:

- a. deliberately criminal or deliberately dishonest act or omission of the **Insured** or a **Responsible Person**; or
- b. profit or advantage gained by any **Insured** to which the **Insured** is not legally entitled; or
- c. any fraudulent act or omission of the **Insured** or a **Responsible Person**; or
- d. any intentional, reckless or wilful acts or omissions of the **Insured** or a **Responsible Person**,

as established by a final and non-appealable adjudication in the underlying proceeding, or formal written admission by such **Insured** or **Responsible Person**.

3.4 U.S.A. Claims or acts

arising out of any **Claim** which is brought or maintained in the United States of America or any **Wrongful Act** or **Loss** occurring in the United States of America.

3.5 Excluded Statutes

arising out of, based upon or attributable to any actual or alleged violations of the responsibilities, obligations or duties imposed by:

- a. any law, regulation, rule, or by-law relating to vehicular, air or marine traffic or the ownership, possession or use of any motor vehicle, trailer, aircraft, spacecraft, watercraft, or hovercraft;
- b. any law, regulation, rule, or by-law anywhere in the world which regulates or restricts anti-trust or monopolistic behavior or practices, price fixing, price discrimination, predatory pricing, deceptive acts and or restraint of trade, or which protects competition;
- c. Sections 182, 183, 601FD, 601JD of the Corporations Act 2001 (Cth), or any similar law anywhere in the world and any amendment thereto; or
- d. the Superannuation Guarantee (Administration) Act 1992 (Cth), or any similar law anywhere in the world, and any amendment thereto.

3.6 Taxes

arising out of, based upon or attributable to any actual or alleged act or failure to act in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost or damages reflecting taxes.

3.7 Professional services

arising out of, based upon or attributable to the performance of or failure to perform professional services.

3.8 Intellectual property and data protection rights

arising out of, based upon or attributable to any actual or alleged infringement, misappropriation or violation of any intellectual property rights or breach of any data protection legislation.

3.9 Contamination damage and nuclear

arising out of, based upon or attributable to, directly or indirectly, loss, damage, or destruction:

- a. arising out of, based upon or attributable to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores, organic pathogens, organic chemicals, microorganisms, or mycotoxins of any kind; or
- b. arising out of, based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste as a consequence of the

combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or

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

3.10 Pollution

arising out of, based upon or attributable to, directly or indirectly, any chemical, biological, radiological, nuclear, or thermal irritant, toxic or hazardous substance, contaminant or waste including asbestos or any materials containing asbestos or any seepage, pollution, or contamination of any kind.

3.11 War and terrorism

- a. arising out of, based upon or attributable to, directly or indirectly any war, invasion, act of foreign enemy, hostile operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot, or civil commotion amounting to a popular uprising, military, or takeover of power or martial law; or
- b. arising out of, based upon or attributable to, directly or indirectly, terrorism.

4. CLAIMS CONDITIONS

4.1 Notification

- a. Claims

The **Insured** must give notice to the **Insurer** of any **Claim** first made against the **Insured** during the **Policy Period** as soon as practicable after the **Responsible Person** first becomes

aware of such **Claim** but in no event later than 60 days after the end of the **Policy Period**, or within any applicable **Discovery Period**;

In the event that the **Insured** is prevented from notifying any **Claim**, (after the **Insured** has sought consent to do so) due to any legal or regulatory prohibition restricting them from doing so, the **Insured** must provide full details of the **Claim** to the **Insurer** as soon as such restriction is lifted;

If the **Insured** does not give notice to the **Insurer** in compliance with this provision, the **Insurer** will have no liability under this policy in respect of that **Claim**.

b. Circumstances

The **Insured** may, during the **Policy Period**, notify the **Insurer** of any fact or **Circumstances** which in the reasonable opinion of the **Responsible Person** may give rise to a **Claim**;

Any notice must include the reasons why the **Responsible Person** reasonably anticipates that the fact or **Circumstances** may give rise to a **Claim** and, where available, full particulars of the dates, acts and persons involved;

Any **Claim** which is made after the end of the **Policy Period**, and which arises from a **Circumstance** notified in accordance with this clause will be deemed to have been made or have occurred at the same time such **Circumstance** was notified.

c. Related matters

A **Single Event** will be treated by the **Insurer** as having been notified when the first of such **Claims** was notified, irrespective of whether or not the **Insurer** has formally accepted the notice.

d. Address for notifications

All notices must be sent either by email or to the address specified on the Schedule.

4.2 Defence and settlement

a. Duties

The **Insured** has the right and duty to defend and contest any **Claim** made against them and will take all reasonable steps to prevent or minimise any **Loss**.

The **Insurer** will be entitled to participate fully in the conduct of the defence, including settlement negotiations, contribution, or indemnification proceedings, where it is reasonably likely to involve the **Insurer** making any payment under this policy.

b. Consent to Defence Costs

The **Insurer** will not be obliged to pay any **Defence Costs** provided under this policy unless the **Insurer** has provided prior written consent to such **Defence Costs** being incurred (except where expressly stated in the policy that prior consent is not first required);

If the **Insurer's** prior written consent cannot reasonably be obtained before **Defence Costs** are incurred, then the **Insurer** will give retrospective approval for such reasonable **Defence Costs** necessarily incurred.

c. Advancements

The **Insurer** will, upon the written request of an **Insured**, advance **Defence Costs** prior to coverage being confirmed.

d. Consent to settlements

If an **Insured** admits liability or compromises or settles any **Claim** without the **Insurer's** prior written consent, this policy will not provide cover to that **Insured** in connection with that admission or **Claim**;

The **Insured** will not be required to receive the **Insurer's** consent prior to making any self-report or formal written representation to a **Regulatory Authority**, provided that, as soon as legally permitted, the **Insured** will seek the consent of the **Insurer** in accordance with this clause. The **Insurer** will not consider such self-report or formal written representation as an admission of liability for the purposes of this clause.

e. Uninsured Loss

The **Insured** will reimburse the **Insurer** for any payments which are ultimately determined not to be covered under this policy.

4.3 Allocation

Where a **Claim** involves both parties covered and not covered and/or matters covered and not covered by this policy, the **Insurer's** liability is limited to the

proportion of the **Claim** or **Loss** which represents a fair and proper allocation between the **Insured** and the **Insurer**, and/or matters covered and not covered by this policy, taking into account the relative legal and financial exposures attributable to the parties and/or matters covered and not covered by this policy.

In the circumstances where the **Insured** and **Insurer** cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to a binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

4.4 Cooperation

The **Insured** will give all information and assistance to the **Insurer** as it may reasonably require to enable it to investigate any matter notified under this policy and cooperate with the **Insurer** in responding to any **Claim**.

4.5 Other insurance or indemnification

This policy will only pay **Loss** that is in excess of any amount recoverable from a more specific directors' and officers'/management liability, pension trustee/fiduciary liability, general liability, employer's liability, or property/crime insurance policy available to the **Insured** issued by a different **Insurer**. As excess insurance, this policy will not apply or contribute to the payment of any **Loss** until the amounts of that other insurance have been exhausted. This clause does not apply to any policy issued by the **Insurer**.

4.6 Subrogation and recoveries

Following a payment under this policy, the **Insurer** will be subrogated to all rights and remedies available to the **Insured** in connection with that payment therefore the **Insurer** has the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in the name of the **Insured**.

Whether before or after payment under this policy, the **Insured** will take all steps necessary, or required by the **Insurer**, to preserve the rights and remedies which the **Insured** may have to recover its **Loss**.

The **Insured** will provide to the **Insurer** any assistance the **Insurer** may require to secure the rights and remedies set out above. The **Insurer** shall be entitled to take control of all steps taken to recover any loss.

Any amounts recovered will be applied in the following order:

- a. to reimburse costs incurred in bringing proceedings against the third party;
- b. then to the **Insured** for the amount of any **Loss** which exceeds the **Limit of Liability**;
- c. then to the **Insurer** up to the amount of the **Loss** paid by the **Insurer** and the **Limit of Liability** will be reinstated for such amounts; and
- d. then to the **Insured** to reimburse the **Retention**.

5. GENERAL CONDITIONS

5.1 Limit of liability

The **Limit of Liability** is the maximum amount payable by the **Insurer** under this Statutory Liability policy in respect of all **Insureds**, Insuring Clauses, and Automatic Extensions.

Any **Loss** paid by the **Insurer** under this policy will reduce the **Limit of Liability**.

Where any sub-limit is specified in the policy or schedule, the **Insurer** will have no liability in excess of that sub-limit.

Any sub-limit will be part of and not in addition to the **Limit of Liability**.

5.2 Combined Policy Aggregate Limit of Liability

The **Combined Policy Aggregate Limit of Liability** listed in the Schedule is the combined total limit of liability for all **Loss** payable under this Statutory Liability Policy or any Directors' and Officer's and Corporate Legal Liability Policy, Employment Practices Liability and/or Commercial Crime policy provided by the **Insurer**. The Schedule will indicate which policies have been purchased.

Each individual policy has its own limit of liability which is part of and not in addition to the **Combined Policy Aggregate Limit of Liability** and is a separate aggregate amount. Each individual policy's limit of liability operates as a sub-limit of the **Combined Policy Aggregate Limit of Liability**. Once the limit of liability for each individual policy is exhausted then the **Insurer** will have no liability in excess of that limit of liability for each individual policy even if the **Combined Policy Aggregate Limit of Liability's** limit has not been exhausted.

Once the **Combined Policy Aggregate Limit of Liability's** limit has been exhausted then the **Insurer** will have no liability in excess of the **Combined Policy Aggregate Limit of Liability** even if the limit of liability has not

been exhausted for any individual policy purchased including this Statutory Liability policy.

5.3 Retention

The **Insurer** will be liable only for that part of any covered **Loss** which exceeds the **Retention**.

Only one **Retention**, being the largest, will be applied to the total amount of **Loss** arising from a **Single Event**.

5.4 Change of control/acquisitions

In the event of a **Change of Control** of the **Insured**, no cover under this policy will apply for any **Claim** against the **Insured** which arises from a **Wrongful Act** that occurred after such **Change of Control**. The **Insured** will, as soon as practicable, give the **Insurer** written notice of any **Change of Control**.

Upon receipt by the **Insurer** of such written notice, the **Insurer** may agree at their sole discretion to the continuation of cover for **Claims** that arise from a **Wrongful Act** that occurred after such **Change of Control**, on such terms and conditions and for such additional premium as the **Insurer** requires.

In the event of an acquisition of a **Subsidiary**, no cover under this policy will apply for any **Claim** against that **Subsidiary** which arises from a **Wrongful Act** that first commenced before such acquisition.

5.5 Discovery period

If this policy is not renewed or replaced, the **Insured** will be entitled:

- a. to an automatic **Discovery Period** of 60 days; or
- b. to purchase an optional **Discovery Period** for a longer period as specified in the Schedule;

provided that written notice is given to the **Insurer** by the **Insured** within 30 days after the end of the **Policy Period** and any additional premium specified by the **Insurer** is paid within 45 days of the end of the **Policy Period**.

The automatic **Discovery Period** is part of and not in addition to any optional **Discovery Period** purchased by the **Insured**.

The **Discovery Period** is non-cancellable and the premium for the optional **Discovery Period** is deemed fully earned at the inception date of the optional **Discovery Period**.

In the event of a **Change of Control** the **Insured** may be offered a 72-month **Discovery Period** on such terms

and conditions and for such additional premium as the **Insurer** requires.

5.6 Cancellation

The **Insured** may cancel this policy at any time giving the **Insurer** 30 days written notice. If the **Insured** has notified any **Claims** or the **Insurer** has made any payments of **Loss** under the policy prior to such cancellation, then the premium for this policy will be deemed fully earned and there will be no refund of any premium due.

If the **Insured** has not notified any **Claims** and the **Insurer** has not made any payments of **Loss**, then the **Insurer** will make a pro-rata refund of premium.

The **Insurer** may cancel this policy in accordance with the Insurance Contracts Act (Cth).

5.7 Third parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **Insured**.

5.8 Assignment

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

5.9 Policy interpretation

This policy, its schedule and any endorsements are one contract in which, unless the context otherwise requires:

- a. headings and subheadings are descriptive only, solely for convenience, not an aid to interpretation and form no part of the terms and conditions of coverage;
- b. "Including" and "include(s)" means without limitation;
- c. references to positions, offices or titles will include their equivalents in any jurisdiction; and
- d. if any provision of this policy is or becomes void or illegal, is invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction, such provision will be deleted. The **Insurer** and the **Insured** will use their best efforts to agree a replacement for the provision which achieves as far as possible the same effect as would have been achieved by the deleted provision.

5.10 Governing law

This Policy will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

Any dispute relating to the **Policy** shall be submitted to the exclusive jurisdiction of an Australian Court within the State or Territory in which the **Policy** was issued.

Any summons, notice or process to be served upon the **Insurer** may be served upon the underwriters:

Allied World Assurance Company (Australia Branch)
Level 21, 264 George Street, Australia Square,
Sydney, NSW 2000 Australia

and,

Lloyd's Underwriters'
General Representative in Australia
Level 9, 1 O'Connell Street,
Sydney, NSW 2000 Australia

who have authority to accept service and to appear on the behalf of the **Insurer**.

5.11 Jurisdictional limits

This policy will only apply to **Claims** brought within the jurisdictional limits stated in the Schedule.

5.12 Insurer's consent

Where the **Insured** is required under this policy to seek the consent of the **Insurer**, the **Insurer** will not unreasonably withhold, delay, or deny such consent.

5.13 Sanction limitation

The **Insurer** will not be liable to provide any cover, benefit or pay any **Claim** under this policy to the extent that the provision of such cover, benefit or payment of such **Claim** would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, or Australia

5.14 Several liability

The liability of the **Insurer** under this policy is several and not joint with other insurers who may be a party to this policy. Insurers are liable only for the proportion of liability it has underwritten. The **Insurer** and any insurers are not jointly liable for the proportion of liability underwritten by any other insurer; nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this policy.

The proportion of liability under this policy underwritten

by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any insurer that may underwrite this policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to this policy in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

6. DEFINITIONS

The following definitions are applicable to all sections of this policy:

Change of Control means any one of the following events:

- a. the **Insured** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Insured** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Insured**;
- c. the appointment of a receiver, liquidator, administrator, or other insolvency practitioner;
- d. an entity ceases to be a **Subsidiary**, or becomes controlled by another entity by virtue of any law; or

- e. the **Insured** undertakes a public offering of or listing of equity securities.
- 6.2 Circumstance** means an incident, occurrence, fact, matter, act, error, or omission which may give rise to a **Claim** against the **Insured**.
- 6.3 Claim** means a written notice that alleges, asserts, or demands the payment of a **Penalty** arising out of a **Wrongful Act**.
- 6.4 Combined Policy Aggregate Limit of Liability** is the amount specified in the Schedule as applicable in the aggregate to any individual policy, including this policy, provided by the **Insurer** to the **Insured**.
- 6.5 Continuity Date** means the date specified in the Schedule.
- 6.6 Defence Costs** means the reasonable fees, costs, expenses, necessarily incurred by or on behalf of the **Insured** solely and exclusively in connection with the investigation, defence, settlement or appeal of, or response to, a **Claim**.
- 6.7 Discovery Period** means the period of time following the end of the **Policy Period** during which notice may be given to the **Insurer** of a **Wrongful Act** committed before the end of the **Policy Period**.
- 6.8 Insured** means the **Policyholder** and **Subsidiary**.
- 6.9 Insurer** means Delta Insurance Australia Pty Ltd writing on behalf of the Underwriters named in the Schedule.
- 6.10 Limit of Liability** means the amount specified in the Schedule applicable to the Statutory Liability policy.
- 6.11 Loss** means:
- a) **Defence Costs**;
 - b) **Penalty**; and
- Loss** does not include, and the **Insurer** is not liable to pay in respect of, any fine or penalty which the **Insurer** is legally prohibited from insuring under any Australian or New Zealand law.
- 6.12 Management Control** means:
- a. controls the composition of the board of directors;
 - b. controls more than half of the shareholder voting power; or
 - c. holds more than half of the issued share capital.
- 6.13 Pending and Prior Litigation Date** means the date specified in the Schedule.
- 6.14 Penalty** means any fine or penalty which is civil, strict, or administrative for which the **Insured** is liable for breach of a **Statute** and which is insurable in the jurisdiction in which the **Claim** giving rise to the fine or penalty is determined.
- Penalty** does not include:
- a. the cost or payment of any enforcement order;
 - b. compliance order;
 - c. the value of property subject to confiscation orders or forfeiture; or
 - d. amounts representing damages, compensation or any remedial or restitution costs, criminal fines, or penalties of any kind.
- 6.15 Policyholder** means the entity named in the Schedule.
- 6.16 Policy Period** means the period specified in the Schedule.
- 6.17 Prior Policy** means any Statutory Liability policy issued to the **Insured** by the **Insurer** only, immediately prior to the commencement of the **Policy Period**.
- 6.18 Regulatory Authority** means any regulator, government, government body, judicial or parliamentary body, governmental or administrative agency, any self-regulatory body recognised in that capacity under applicable law or official trade body.
- 6.19 Responsible Person** means any member of the Board of Directors, the Risk Manager, Insurance Manager, Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Compliance Officer, Head of Audit or General Counsel including any individual in a substantially similar position or with substantially similar responsibilities as those referenced, irrespective of the exact title of such individual, of the **Insured**.
- 6.20 Retention** means the applicable amount specified in the Schedule or as otherwise specified in the Policy.
- 6.21 Single Event** means all **Claims** arising out of, based upon or attributable to the same originating cause, source, or event. The **Insurer** will deem all **Claims** that are attributable to, results from or is in connection with, or gives rise to the insolvency of the **Insured** as the same originating cause, source, or event.
- 6.22 Statute** means any act, regulation or other legislative instrument enacted under the laws of

the Commonwealth of Australia, any Australian State or Australian Territory or New Zealand.

6.23 Subsidiary means any entity in which the **Policyholder** either directly or indirectly through one or more entities has or had **Management Control** on or before the inception date of this policy.

Subsidiary will include:

- a. any new entity which the **Policyholder** incorporates during the **Policy Period** and which, at the time of incorporation, the **Policyholder** has **Management Control** provided that such entity is not incorporated, domiciled, has equity securities, trades in or employees in the United States of America;
- b. any entity that the **Policyholder** acquires **Management Control** of during the **Policy Period** provided that at the time of obtaining that **Management Control**, the acquired entity is not incorporated, domiciled, has employees in or has equity securities issued or traded, in the United States of America.

Subsidiary does not include any fund, investment vehicle, managed investment scheme or trust.

6.24 Wrongful Act means any actual or alleged breach of **Statute** by the Insured.



**Embrace
Change.**

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