

SCHEDULE
ASSOCIATION LIABILITY INSURANCE – 01/14
Nova Underwriting Pty Ltd

Attaching to and forming part of policy # 192195

Unique Market Reference Number: B1262BW0093518

ITEM [A]: Organisation: Triathlon Australia Limited and all affiliated bodies including State and Territory Associations and clubs

**ITEM [B]: Insurance Period: From: *4pm on 30th June 2020 to *4pm on 30th June 2021
(*Sydney time)**

ITEM [C]: Sum Insured: \$5,000,000 but Employment Practices Liability is \$1,000,000

ITEM [D]: Pollution sub-limit: \$50,000

ITEM [E]: Fidelity Loss sub-limit: \$100,000

ITEM [F]: Pecuniary Penalties sub-limit: \$250,000

ITEM [G]: Tax Audit Expenses: \$50,000

ITEM [H]: Asset Value: \$1

**ITEM [I]: Excess \$5,000 Costs Inclusive
\$10,000 Costs Inclusive for Employment Practices Liability and Fidelity
Loss Liability.
\$2,500 Costs Inclusive for Tax Audit Expenses**

ITEM [J]: Outside Entity: None

ITEM [K]: Sporting Association

SPECIAL CONDITIONS:

- 1. Trustees Liability (Insuring Clause 1.6) is deleted**
- 2. Insolvency Exclusion (*attached*)**
- 3. Cyber Loss Exclusion (*attached*)**

LLOYD'S



4. No **Security** shall be deemed to provide cover and no **Security** shall be liable to pay any **Claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the **Security** 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, Australia or United States of America.

RETROACTIVE DATE: 30/06/2012

*Signed for and on behalf of Nova Underwriting Pty Ltd by:
Suite 34, Level 7, 88 Pitt Street, Sydney, NSW.*



on 27/07/2020

Association Liability Insurance [01/14]

Nova Underwriting Pty Ltd
ACN 42 127 786 823 / AFSL 324767

1.0 INSURING CLAUSES**PROFESSIONAL INDEMNITY**

- 1.1** We will cover the **Insured** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Professional Act**.

DIRECTORS and OFFICERS

- 1.2** We will cover the **Insured Persons** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Management Act**, unless the **Association** is providing them with **Indemnification** for such **Loss**.

ASSOCIATION REIMBURSEMENT

- 1.3** We will cover the **Association** for payments it is permitted or required by law to make on behalf of the **Insured Persons** through **Indemnification** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Management Act**.

ASSOCIATION LIABILITY

- 1.4** We will cover the **Association** for **Loss** arising from any **Claim** first made against the **Association** and reported to **Us** during the **Insurance Period** arising from any **Management Act**.

EMPLOYMENT PRACTICE LIABILITY

- 1.5** We will cover the **Insured** for **Loss** arising from any **Claim** first made against the **Insured** and reported to **Us** during the **Insurance Period** arising from any **Employment Act**.

TRUSTEE LIABILITY

- 1.6** We will cover the **Trustee** for **Loss** arising from any **Claim** first made against the **Trustee** and reported to **Us** during the **Insurance Period** arising from any **Trustee Act**.

FIDELITY LOSS

- 1.7** We will cover the **Association** for **Fidelity Loss** first **Discovered** and reported to **Us** during the **Insurance Period** arising from any **Dishonest Act**. **Our** liability for **Fidelity Loss** is limited to the sum stated in Item [E] of the Schedule.

TAX AUDIT EXPENSES

- 1.8** We will cover the **Association** for **Tax Audit Expenses** arising from an **ATO** tax audit or investigation that first commences and is reported to **Us** during the **Insurance Period**. **Our** liability to pay **Tax Audit Expenses** is limited to the sum stated in Item [G] of the Schedule.

2.0 AUTOMATIC EXTENSIONS

These extensions **ONLY** apply to the Insuring Clauses quoted in the extension, but other than Automatic Extension 2.14 their inclusion does not increase the **Sum Insured** , and each extension is always subject to the terms of the policy unless varied by the extension :

OUTSIDE DIRECTORSHIPS

- 2.1** An **Insured Person** includes a person serving [at the direction or request of the **Association**] as a director or officer, trustee, governor or equivalent position of an **Outside Entity**, unless:
- 2.1.1** the **Outside Entity** is providing **Indemnification** for such **Loss**; or
 - 2.1.2** such **Loss** is covered under another policy of insurance, and in which case the cover for such **Loss** under this policy shall be in excess of that other insurance.

EXCEPT as provided under Automatic Extension 2.15 [INSURED vs INSURED], **We** will not cover **Loss** arising from any **Claim** made against an **Insured Person** by or on behalf of the **Outside Entity**.

Automatic Extension 2.1 only applies to Insuring Clauses 1.2,1.3 and 1.5.

POLLUTION

- 2.2** Exclusion 4.10 [POLLUTION] will not apply to **Defence Costs**, but only if the **Management Act** was not committed in **USA** or **Canada** and **Our** liability to pay such **Defence Costs** is limited to the sum stated in Item [D] of the Schedule.

Automatic Extension 2.2 only applies to Insuring Clauses 1.2 and 1.3.

RETIRED DIRECTORS, OFFICERS and TRUSTEES – RUN OFF COVER

2.3 We will cover retired **Insured Persons** and **Trustees** for **Loss** arising from any **Claim** first made against them and reported to **Us** within 12 months after the **Insurance Period** has expired , but only if:

2.3.1 this policy is not renewed or replaced with similar insurance.

2.3.2 the **Insured** do not purchase an extended reporting period under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD].

2.3.3 the **Insured Act** was committed before the **Insurance Period** expired.

Automatic Extension 2.3 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

EXTENDED REPORTING PERIOD

2.4 We will cover the **Insured** for **Loss** arising from any **Claims** first made against them and reported to **Us** within 12 months after the **Insurance Period** has expired, but only if :

2.4.1 this policy is not renewed or replaced with similar insurance.

2.4.2 the **Insured Act** was committed before the **Insurance Period** expired.

2.4.3 the **Insured** advises **Us** during the **Insurance Period** that it elects to purchase this extension, and agrees to pay **Us** an additional premium of 100% of the premium applicable for that **Insurance Period** within 30 days of its expiry.

Automatic Extension 2.4 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

SPOUSE COVER

2.5 Any **Claim** brought against any **Insured Person's** or **Trustee's** lawful spouse arising from an **Insured Act** committed by the **Insured Person** or **Trustee**, will be covered by this policy to the same extent as if the **Claim** had been brought against the **Insured Person** or **Trustee**.

Automatic Extension 2.5 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

ESTATES, HEIRS and LEGAL REPRESENTATIVES

2.6 Any **Claim** brought against any **Insured Person's** or **Trustee's** estates, heirs or legal representatives following their death, incapacity or bankruptcy, will be covered by this policy to the same extent as if the **Claim** had been brought against the **Insured Person** or **Trustee**.

Automatic Extension 2.6 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

INDEMNITY PRESERVATION

- 2.7** If the **Association** is permitted or required by law to provide **Indemnification** to any **Insured Person** for **Loss** arising from a **Claim** but fails to do so, then **We** will pay such **Loss** on behalf of the **Insured Person** . If **We** do this, the **Association** will be liable to reimburse **Us** for such payments up to the amount of any **Excess** applicable to Insuring Clause 1.2.

Automatic Extension 2.7 only applies to Insuring Clause 1.2.

OCCUPATIONAL HEALTH and SAFETY

- 2.8** Exclusions 4.5 [BODILY INJURY] and 4.8 [INSURED vs INSURED] will not apply to **Defence Costs** for any **Claim** arising from a breach of occupational health and safety laws.

Automatic Extension 2.8 only applies to Insuring Clauses 1.2,1.3 and 1.4.

SEVERABILITY and NON-IMPUTATION

- 2.9** For the purposes of determining any **Insured Person's** or **Trustee's** entitlement to cover under this policy, the proposal for this insurance will be construed as a separate application for cover by each **Insured Person** or **Trustee**, and the knowledge of one **Insured Person** or **Trustee** will not be imputed to another **Insured Person** or **Trustee**. If any **Insured Person** or **Trustee** fails to comply with the terms or conditions of this policy, such failure will not jeopardise cover to another **Insured Person** or **Trustee** who has complied with them.

Automatic Extension 2.9 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

ADVANCEMENT OF DEFENCE COSTS

- 2.10** If **We** elect not to take over and conduct the defence or settlement of any **Claim**, and subject to any **Excess**, **We** will pay all reasonable **Defence Costs** associated with that **Claim** as and when they are incurred, but only if **We** have not denied cover for the **Claim**.

We reserve the right to recover any **Defence Costs** paid under this extension from the relevant **Insured** in the event and to the extent that it is subsequently established by judgment or other final adjudication, that there was no entitlement to cover under this policy.

Automatic Extension 2.10 only applies to Insuring Clauses 1.1,1.2,1.3,1.4,1.5 and 1.6.

INQUIRIES

- 2.11** **We** will pay **Defence Costs** incurred by any **Insured Person** or **Trustee** in attending any official investigation, examination, inquiry or other proceedings relating to the affairs of the **Association** or **Superannuation Fund**, but only if:

- notice to attend the proceedings was first received by the **Insured Person** or **Trustee** and reported to **Us** during the **Insurance Period**.
- **Our** liability to pay **Defence Costs** is limited to the **Sum Insured**.

Automatic Extension 2.11 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

PECUNIARY PENALTIES

- 2.12** Despite Definition 11.14, **Loss** includes, to the extent permitted by law, pecuniary penalties imposed upon any **Insured Person** or **Trustee** under Australian or New Zealand statutes. **Our** liability to pay such pecuniary penalties is limited to the sum stated in Item [F] of the Schedule.

Automatic Extension 2.12 only applies to Insuring Clauses 1.1,1.2,1.3,1.5 and 1.6.

SUBSIDIARIES – NEW/OLD/RUN-OFF

- 2.13** Subject to Conditions 9.7 [ACQUISITIONS] and 9.9 [AUTHORISATION], the **Association** includes any **Subsidiary**, but only for **Insured Acts** committed while the company was a **Subsidiary**.

Automatic Extension 2.13 only applies to Insuring Clauses 1.1,1.2,1.3,1.4,1.5,1.6 and 1.7.

AUTOMATIC REINSTATEMENT

- 2.14** If **We** have made **Loss** payments and/or payments for **Policy Claims** equivalent to the **Sum Insured**, **We** will reinstate the **Sum Insured**. The reinstated **Sum Insured** will not apply to existing **Claims** or **Policy Claims**, or to **Claims** or **Policy Claims** arising from matters that have already been reported to **Us** or any other insurer, or to **Claims** or **Policy Claims** that are related to existing **Claims** or **Policy Claims**.

Automatic Extension 2.14 applies to all Insuring Clauses.

INSURED vs INSURED

- 2.15** **We** will cover **Defence Costs** arising from a **Claim** by one **Insured Person** or the **Association** against another **Insured Person**. **We** will also cover **Loss** arising from a **Claim** against any **Insured Person** :

2.15.1 by another **Insured Person** for contribution or indemnity, but only if the **Claim** arises from another **Claim** covered by this policy.

2.15.2 by the **Association** as a statutory derivative action, but only if the **Claim** is not solicited or voluntarily assisted by another **Insured** party.

2.15.3 by a liquidator, administrator or receiver or equivalent in any jurisdiction, including an action brought in the name of the **Association** by those parties, but only if the **Claim** is not solicited or voluntarily assisted by another **Insured Person**.

2.15.4 by the **Association** pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.

For the purposes only of this extension, the **Association** includes any **Outside Entity**.

Automatic Extension 2.15 only applies to Insuring Clauses 1.2 and 1.3

CONSULTANTS, SUB- CONTRACTORS and AGENTS

- 2.16** A **Professional Act** includes a breach of professional duty by consultants, sub-contractors and agents employed by the **Association** , but only in relation to **Claims** brought against the **Insured**.

Automatic Extension 2.16 only applies to Insuring Clause 1.1.

INTELLECTUAL PROPERTY/CONFIDENTIALITY

- 2.17** A **Professional Act** includes unintentional infringement of intellectual property rights, including copyright, patent, trademark, plagiarism, registered design and breach of confidentiality.

Automatic Extension 2.17 only applies to Insuring Clause 1.1.

DEFAMATION

- 2.18** A **Professional Act** includes making a libellous or slanderous statement.

Automatic Extension 2.18 only applies to Insuring Clause 1.1.

TRADE PRACTICES

- 2.19** A **Professional Act** includes an unintentional breach of Australian or New Zealand trade practices or fair trading legislation.

Automatic Extension 2.19 only applies to Insuring Clause 1.1.

COMMITTEES

- 2.20** **Insured Person** includes members of committees established by the **Association**, but only while on official committee business.

Automatic Extension 2.20 only applies to 1.1,1.2,1.3,1.4,1.5 and 1.6.

4.0 GENERAL EXCLUSIONS – APPLICABLE TO ALL INSURING CLAUSES [Unless otherwise stated]
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We will not cover **Loss, Fidelity Loss, or Tax Audit Expenses** arising from any **Claim** or **Policy Claim** :

4.1 ASBESTOS

arising from asbestos.

PERSONAL PROFIT and CONDUCT

4.2 arising from:

4.2.1 the **Insured** gaining any personal profit or advantage or receiving any remuneration to which they were not legally entitled; or

4.2.2 the **Insured** committing any act or omission which is malicious, dishonest or fraudulent or any wilful violation of the law ;

but this exclusion will only apply if there is an admission, or a court, tribunal, or regulator finds that the **Insured** acted in the manner described in **4.2.1** and **4.2.2**.

This exclusion will not apply to Insuring Clause 1.7.

KNOWN CLAIMS or CIRCUMSTANCES

4.3 arising out of any fact, event, circumstance or **Insured Act** notified, or claim made, under any policy prior to the **Insurance Period**, or which was known [or ought reasonably to have been known] about by any **Insured** prior to the **Insurance Period**.

PROPERTY

4.4 for damage to, or destruction of, or loss of use of, tangible property EXCEPT as provided under Insuring Clauses 1.6 or 1.7.

This Exclusion will not apply to Insuring Clause 1.1.

BODILY INJURY

4.5 for bodily injury, sickness, disease, emotional distress, mental injury or anguish, or death of any person, but this exclusion will not apply to any **Claim** for emotional distress or mental anguish arising from an **Employment Act**.

This exclusion will not apply to Insuring Clause 1.1.

USA/CANADA - JURISDICTION

4.6 brought in a court in **USA** or **Canada**, or any court exercising jurisdiction under any law of **USA** or **Canada**, or in any other court to enforce a judgement or order of those courts.

4.7 BENEFITS

arising from violations of the responsibilities, obligations or duties imposed by any law relating to worker's compensation, unemployment insurance, retirement benefits, social security, or disability benefits or other employment related benefits.

This exclusion will not apply to Insuring Clauses 1.2, 1.3 or 1.5.

INSURED vs INSURED

- 4.8 made against any **Insured** party by another **Insured** party, EXCEPT as provided in Automatic Extension 2.15 [INSURED vs INSURED]. For the purposes of this exclusion only, an **Insured** party includes any **Outside Entity**.

This exclusion will not apply to Insuring Clauses 1.5.

SUPERANNUATION

- 4.9 arising in connection with any superannuation or pension fund.

This exclusion will not apply to Insuring Clause 1.6.

POLLUTION

- 4.10 arising from **Pollution**, EXCEPT as provided in Automatic Extension 2.2 [POLLUTION].

NUCLEAR

- 4.11 arising from 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 component of a nuclear assembly.

WAR

- 4.12 arising from war, invasion, act of foreign enemy, hostilities or warlike operations [whether war has been declared or not], civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority.

TERRORISM

- 4.13 arising from terrorism [including contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft]. For the purposes of this exclusion, terrorism means any acts of force or violence [whether threatened or actual] by any person or persons acting alone or on behalf of or in connection with any organisation, which are carried out for political, religious or ideological ends and is either directed towards the overthrowing or influencing of the government de jure or de facto or towards putting the public or any part of the public in fear.

SECURITIES

- 4.14 arising from or attributable to the offering of securities of the **Association**, other than those specifically agreed in writing by **Us**.

PROFESSIONAL SERVICES

- 4.15 arising from the provision of, or failure to provide, professional services or advice, including ,a breach of any contract to provide such services or advice, except for an **Insured Act** of an **Insured Person** acting solely in their capacity as an **Insured Person** or **Trustee** and in circumstances where such professional services or advice is provided to the **Insured** and not to third parties as part of the professional services or advice provided by the **Association**.

This Exclusion will not apply to Insuring Clause 1.1.

MAJOR SHAREHOLDERS

- 4.16 brought by or on behalf of any shareholder owning or controlling more than 20% of the issued capital of the **Association** or **Outside Entity**.

CONTRACTUAL LIABILITY

- 4.17 arising from any obligation assumed by the **Insured** by way of warranty, guarantee, contract or indemnity [other than **Indemnification**] unless such obligation would have existed independently of such assumption.

MOTOR VEHICLES, MARINE CRAFT and AIRCRAFT

- 4.18 arising from the **Insured's** liability as an owner or operator of aircraft, marine craft or motor vehicles.

OWNER/OCCUPIER'S LIABILITY

- 4.19 arising from the **Insured's** ownership or occupation of land or buildings.

INVESTMENT ADVICE

- 4.20 arising from any advice or forecast given by the **Insured** in relation to the performance of an asset or investment or in the making of any discretionary fund decision by the **Insured**.

MOLESTATION

- 4.21 arising from the actual or alleged molestation, interference, or mental or physical abuse of any person.

This Exclusion will not apply to Insuring Clause 1.5.

5.0 ADDITIONAL EXCLUSION APPLICABLE TO INSURING CLAUSE 1.4 – ASSOCIATION LIABILITY

Under Insuring Clause 1.4, **We** will not cover **Loss** arising from any **Claim** arising from:

PRODUCTS

- 5.2 manufacture, distribution or sale of products by the **Association**, or the recall of such products.

6.0 ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.5 – EMPLOYMENT PRACTICES LIABILITY

Under Insuring Clause 1.5, **We** will not cover **Loss** arising from any **Claim** arising from :

EXISTING OBLIGATIONS

- 6.1 specific obligations imposed under any contract of employment, employment agreement, statute, award or otherwise.

UNFAIR CONTRACTS

- 6.2 a contract of employment or employment agreement alleged to be unfair, including the seeking of relief pursuant to Section 106 of the Industrial Relations Act [NSW] 1996 or Section 276 of the Industrial Relations Act [Queensland] or similar legislation in other jurisdictions.

PHYSICAL MODIFICATIONS

- 6.3 the cost of physical modifications to premises, plant or equipment owned or used by the **Association**.

7.0 ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.7 - FIDELITY LOSS

Under Insuring Clause 1.7, **We** will not cover:

CONSEQUENTIAL LOSS

- 7.1 any indirect indirect or consequential loss of any kind, including loss of income such as interest and dividends not realized by the **Association** or any other party, arising from **Fidelity Loss**.

DISHONESTY of DIRECTORS/SHAREHOLDERS

- 7.2 Fidelity Loss** arising from dishonest or fraudulent acts of any director, or any shareholder, who held over 5% of the voting share capital of the **Association** at the time of such acts.

DISCOVERY OUTSIDE INSURANCE PERIOD

- 7.3 Fidelity Loss** that is not first **Discovered** during the **Insurance Period** or during any extended reporting period purchased under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD].

TERRITORIAL LIMITS

- 7.4 Fidelity Loss** sustained outside Australia or New Zealand.

TRADING LOSSES

- 7.5 Fidelity Loss** arising from authorized or unauthorized trading.

CONFIDENTIAL INFORMATION

- 7.6 Fidelity Loss** arising from accessing, use or dissemination of any confidential information, including trade secrets, computer programs, customer information, patents, trademarks, processing methods or copyrights.

POST DISCOVERY LOSSES

- 7.7 Fidelity Loss** caused by any person after a **Dishonest Act** by that person has been **Discovered**.

PROOF OF LOSS

- 7.8 Fidelity Loss** evidenced only by profit and loss figures or inventory calculations [including stocktakes] , but if the person who committed [or is suspected of committing] the **Dishonest Act** has been identified, this data will be accepted for the purposes of reporting to **Us** that a **Fidelity Loss** [yet to be evidenced and quantified to **Our** satisfaction] may have occurred.

8.0 ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.8 – TAX AUDIT EXPENSES

Under Insuring Clause 1.8, **We** will not cover **Tax Audit Expenses** arising from:

DELAY

- 8.1** improper, unwarranted or unjustified delay, refusal or failure to comply with **ATO** requests for information or documents.

UNRELATED INQUIRIES

- 8.2 ATO inquiries unrelated to an identified intention to conduct an audit or investigation.

OUTSIDE AUSTRALIA

- 8.3 audits or investigations relating to services provided, or to income earned or sourced, outside Australia.

CRIMINAL/CUSTOMS

- 8.4 matters related to customs legislation or a criminal prosecution.

EXISTING MATTERS

- 8.5 audits or investigations of which the **Association** was aware prior to the **Insurance Period**.

FRAUD/MISREPRESENTATION

- 8.6 fraud or misrepresentation by the **Association**.

TAX RETURNS

- 8.7 an income return that was not prepared or reviewed by an accountant or registered tax agent UNLESS the return is a prescribed sales or payroll tax return.

POST AUDIT

- 8.8 an audit or investigation after it has been completed.

9.0 CONDITIONS

REPORTING CLAIMS

- 9.1 As soon as possible, and within the **Insurance Period** [or within any extended reporting period under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD] if purchased], **We** must be given written notice of the **Claim** or **Policy Claim**, and be given such information and assistance as **We** consider necessary to deal with the **Claim** or **Policy Claim**.

MANAGING CLAIMS

- 9.2 **We** will have the right, but not the obligation, to control the defence and settlement of any **Claim** including the appointment of lawyers to represent the **Insured** . The **Insured** shall, as soon as possible, furnish **Us** with copies of reports, investigations, pleadings, letters, legal opinions and advices, claim forms and all other papers in connection with any **Claim, Policy Claim** or circumstance notified. No **Defence Costs** shall be incurred, nor any admission, offer, settlement, promise or indemnity shall be made or given by the **Insured** without **Our** consent which will not be unreasonably withheld. Where the same or a similar **Claim** is made against more than one **Insured** party, the same lawyers will be appointed to defend all parties, unless there is a conflict of interest between them.

SENIOR COUNSEL

- 9.3 Neither the **Insured** nor **We** shall be required to contest any **Claim** unless a Queen's Counsel, Senior Counsel or lawyer of equivalent standing [to be mutually agreed upon or, in the absence of agreement, to be appointed by the Chair or President of the local of Bar Council] shall advise that the **Claim** should be contested.

CLAIMS SETTLEMENTS

- 9.4 If any **Insured** refuses to consent to any settlement recommendation by **Us** and elects to contest a **Claim**, then **Our** liability for such **Claim** will not exceed the amount for which the **Claim** could have been settled, plus **Defence Costs** up to the date of the **Insured's** refusal to consent.

ALLOCATION

- 9.5 If a **Claim** or **Policy Claim** is only partly covered by this policy, and the **Insured** and **We** are unable to agree upon an allocation between what is covered and what is not, the allocation will be referred to a Queen's Counsel or Senior Counsel for a determination which will be binding on the **Insured** and **Us**. The choice of such Queen's Counsel or Senior Counsel is a matter for mutual agreement between the **Insured** and **Us**, but failing any such agreement, the choice will be made by the Chair or President of the local Bar Council. The fees for the determination are part of **Defence Costs**, and the allocation finally determined will also apply to any payments made by **Us** prior to the determination.

TAKEOVER/MERGER

- 9.6 In the event of a takeover by or merger with any other organization, or if any entity or person acquires 50% or more of the voting stock of the **Association**, this policy will only cover **Claims** arising from any **Insured Act** committed by the **Insured** prior to the date of such takeover, merger or acquisition UNLESS otherwise agreed by **Us**.

ACQUISITIONS

- 9.7 If during the **Insurance Period** the **Association** acquires [directly, or indirectly through any **Subsidiary**] a controlling interest in another company which has :

- total assets exceeding the sum stated in Item [H] of the Schedule; or
- any of its securities listed on any exchange in **USA** or **Canada**; or
- revenues or assets exceeding US\$5,000,000 in the **USA** or **Canada**,

then this policy will only cover that company if **We** are provided with such details as **We** require of the acquisition, and **We** subsequently confirm such cover [which may be subject to additional premium and/or special conditions].

SUBROGATION

- 9.8** If **We** make any payment under this policy, **We** will become entitled to the rights of recovery of the **Insured**. In exercising these rights, **We** will be entitled to reasonable co-operation and assistance from the **Insured**.

AUTHORISATION

- 9.9** The **Association** agrees to act on behalf of all other **Insured** parties regarding the communication of notices under this policy, including reporting of any **Claim** or **Policy Claim**, cancellation, premium payment, endorsements, seeking inclusion of acquisitions required under Condition 9.7 [ACQUISITIONS] and the exercising of the extended reporting period option under Automatic Extension 2.4 [EXTENDED REPORTING PERIOD]. Those other **Insured** parties agree that the **Association** will so act on their behalf.

GOVERNING LAW

- 9.10** This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts (or a federal court) based in that state or territory.

ASSIGNMENT

- 9.11** This policy cannot be assigned without **Our** written consent.

CONSIDERATION/RELIANCE

- 9.12** The cover provided by **Us** under this policy is in consideration of the payment of the agreed premium, and in reliance on the statements made and information provided to **Us** by the **Insured**.

VALIDITY

- 9.13** To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

HEADINGS

- 9.14** Paragraph titles used in this policy are included for reference purposes only and do not form part of this policy for the purpose of its construction or interpretation.

CANCELLATION

- 9.14** The **Association** may cancel this policy at any time by notifying **Us** in writing. **We** may also cancel this policy, but only in accordance with the law. In the event of cancellation, any refund of premium, and the amount of that refund, is at our sole discretion.

GENERAL INSURANCE CODE of PRACTICE

- 9.15** Other than for **Claims** or **Policy Claims** managed outside Australia, this policy complies with the Insurance Council of Australia's General Insurance Code of Practice. The purpose of the

Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

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

who will refer the matter to Policyholder and Market Assistance at Lloyd's . If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

SERVICE OF SUIT

9.16 Any summons or process to be served upon the **Security** may be served upon:

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

who has authority to accept service and to enter an appearance on behalf of the **Security**, and who is directed at the **Association's** request to give a written undertaking to the **Association** that they will enter an appearance on behalf of the **Security**.

10.0 LIMITS, EXCESSES and MULTIPLE CLAIMS

LIMITS

10.1 **Our** aggregate limit of liability for all **Loss, Fidelity Loss** and **Tax Audit Expenses** arising from all **Claims** and **Policy Claims** under this policy is the **Sum Insured** [subject to the sub-limits stated in Items [D] to [G] of the Schedule], being the amount stated in Item [C] of the Schedule. Sub-limits of liability stated in Items [D] to [G] of the Schedule, and **Our** liability to make payments under the Automatic Extensions to this policy, are part of the **Sum Insured** and not in addition to it.

EXCESS

10.2 The **Excess**, being the amount stated in Item [I] of the Schedule, shall apply to the **Loss** or **Fidelity Loss** arising from each **Claim** or **Policy Claim**. EXCEPT as provided under Automatic Extension 2.7 [INDEMNITY PRESERVATION], **We** will have no obligation to pay any **Loss** below the **Excess** for each **Claim** or **Policy Claim**.

MULTIPLE CLAIMS

10.3 All **Claims** or **Policy Claims** or series of **Claims** or **Policy Claims** arising from, attributable to, or which are otherwise causally connected with a single **Insured Act** or a series of related **Insured Acts** or which are otherwise causally connected, will be considered one **Claim**.

11.0 DEFINITIONS

- 11.1 Association** means the company named in Item [A] of the Schedule, and any **Subsidiary** subject to Automatic Extension 2.13 [SUBSIDIARIES-NEW/OLD/RUN-OFF].
- 11.2 ATO** means the Australian Taxation Office.
- 11.3 Claim[s]** means a written demand for compensation or damages, or civil or criminal proceedings.
- 11.4 Defence Costs** means the reasonable and necessary costs, charges and expenses incurred in defending, investigating or responding to a **Claim**, or in attending proceedings covered by Automatic Extension 2.11 [INQUIRIES]. **Defence Costs** do not include the salaries, wages, benefits and personal expenses of any **Insured Person**.
- 11.5 Discovered** means when any **Insured Person** [not in collusion with another **Insured Person** who was or is attempting to commit a **Dishonest Act**] first becomes aware of facts which would cause a reasonable person to believe that a **Fidelity Loss** has or may result.
- 11.6 Dishonest Act** means any fraudulent or dishonest act committed by an employee [alone or in collusion with others] of the **Association** with intent to cause the **Association** to sustain a **Fidelity Loss**.
- 11.7 Employment Act** means any employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising relating to employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment; wrongful discrimination; failure to grant tenure; invasion of privacy or defamation, committed by the **Insured**.
- 11.8 Fidelity Loss** means direct financial or physical loss of money, securities, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes, or tangible property either owned by the **Association**, or in the care, custody or control of the **Association** and for which it is legally liable. **Fidelity Loss** does not include wages, **Benefits**, salaries or other remuneration benefits of **Insured Persons**.
- 11.9 Indemnification** means that the **Association** or **Outside Entity** is discharging by way of indemnity the liability of any **Insured Person** for **Loss** as it falls due to be paid.
- 11.10 Insurance Period** means the period stated in Item [B] of the Schedule.
- 11.11 Insured** means the **Association**, the **Insured Persons** and any **Trustee**.
- 11.12 Insured Act** means a **Management Act**, or an **Employment Act** or a **Trustee Act** or a **Dishonest Act**.

11.13 Insured Person means: any natural person who was, is or becomes a director, secretary, executive officer or employee of the **Association**; or any natural person who by virtue of legislation is deemed to be a director, secretary, executive officer or employee of the **Association**.

11.14 Loss means **Defence Costs** and any other amount payable for a **Claim** including damages, judgements, settlements and interest. **Loss** does not include fines, taxes, penalties, punitive or exemplary or multiple damages EXCEPT as provided under Automatic Extension 2.12 [PECUNIARY PENALTIES].

11.15 Management Acts means any actual or alleged act, error, omission, conduct, misstatement, misleading statement, neglect, or breach of: duty, trust, contract, warranty of authority, statute or confidentiality by:

- an **Insured Person** in their capacity as an **Insured Person**.
- the **Association**.

Management Act does not include an **Employment Act, Trustee Act, Professional Act** or **Dishonest Act**.

11.16 Outside Entity means:

- any non-profit organisation of any kind that is exempt from the payment of income tax, other than a **Subsidiary** or a **Superannuation Fund**.
- any organization named in Item [J] of the Schedule, or any organization which we subsequently agree to be an **Outside Entity**.

11.17 Policy Claim means a claim on this policy for **Fidelity Loss** or **Tax Audit Expenses** under Insuring Clauses 1.7 or 1.8.

11.18 Pollution means any actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of pollutants or contamination of whatever kind, or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants.

11.19 Professional Act means a breach of professional duty by an **Insured Person** in the provision of services described in Item [K] of the Schedule.

11.20 Security means : certain Underwriters at Lloyd's, each of whom [including their executors and administrators] is only liable for their share of any claim, loss, liability or expense payable by this policy. Details of each Syndicate and its share can be obtained from Nova Underwriting Pty Ltd. The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.

11.21 Subsidiary means:

- a subsidiary of the **Association** as defined in the Corporations Act 2001.
- a body corporate in which the **Association** controls the composition of the board, or controls more than 50% of the issued share capital.

11.22 Superannuation Fund means a superannuation fund administered by a **Trustee** for the benefit of the employees of the **Association**.

11.23 Tax Audit Expenses means the fees, charges or disbursements of an accountant, registered tax agent or other tax consultant hired by the **Association** in connection with an **ATO** tax audit or investigation.

11.24 Trustee means a natural person who was, is or becomes a trustee of a **Superannuation Fund**.

11.25 Trustee Act means any actual or alleged act, error, omission, conduct, misstatement, misleading statement, neglect or breach of: duty, trust, contract, warranty of authority, statute, or confidentiality by a **Trustee** in connection with a **Superannuation Fund**. **Trustee Act** does not include a **Management Act, Employment Act, Professional Act** or **Dishonest Act**.

11.26 Us, We and Our means Nova Underwriting Pty Ltd on behalf of the **Security**.

11.27 USA or Canada means the territories, possessions and states of the United States of America or Canada.