

**SCHEDULE**  
**ASSOCIATION LIABILITY INSURANCE – 11/21**  
**Nova Underwriting Pty Ltd**

<b>Policy Number:</b>	192195
<b>Unique Market Reference Number:</b>	B1262BW0093522
<b>ITEM [A]:</b>	Organisation: Triathlon Australia Limited and all affiliated bodies including State and Territory Associations and clubs
<b>ITEM [B]:Insurance Period:</b>	From: *4pm on 30 <sup>th</sup> June 2022 To: *4pm on 30 <sup>th</sup> June 2023 (*Sydney time)
<b>ITEM [C]:Sum Insured:</b>	\$5,000,000 but Employment Practices Liability is \$1,000,000
<b>ITEM [D]:Pollution sub-limit:</b>	\$50,000
<b>ITEM [E]:Fidelity Loss sub-limit:</b>	\$100,000
<b>ITEM [F]:Pecuniary Penalties sub-limit:</b>	\$250,000
<b>ITEM [G]:Tax Audit Expenses:</b>	\$50,000
<b>ITEM [H]:Asset Value:</b>	\$1
<b>ITEM [I]:Excess</b>	\$5,000 Costs Inclusive \$10,000 Costs Inclusive for Employment Practices Liability and Fidelity Loss Liability. \$2,500 Costs Inclusive for Tax Audit Expenses
<b>ITEM [J]:Outside Entity:</b>	None
<b>ITEM [K]:</b>	Sporting Association



**SPECIAL CONDITIONS:**

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

**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 6/07/2022*

LLOYD'S



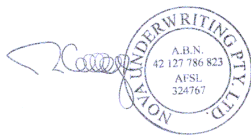
**INSOLVENCY EXCLUSION – Association Liability**  
*[Association Liability 01/14 Form]*  
Nova Underwriting Pty Ltd

**The following endorsement applies to this policy:**

We will not cover **Loss, Fidelity Loss, or Tax Audit Expenses** arising from any **Claim** or **Policy Claim** arising from or in any way connected with the insolvency, liquidation, bankruptcy, receivership or administration of the **Association** or its actual or alleged inability to meet any or all of its debts as and when they fall due.

**Subject otherwise to the terms of this policy.**

***Signed on behalf of Nova Underwriting Pty Ltd:***



***on 6/07/2022***

**# 2819 *Insolvency Exclusion – 01/14 Association Liability Form.***

**Association Liability Insurance [11-21]**

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 \$100,000 for the **Insurance Period**.
- the **Excess** applies to each claim made under this extension.

**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.**

<b>4.0 GENERAL EXCLUSIONS – APPLICABLE TO ALL INSURING CLAUSES [Unless otherwise stated]</b>
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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.**

## CYBER EXCLUSION

**4.22** arising from any liability or loss arising from any intrusion due to the failure or the circumvention of the security of **Your Computer System**, which results in any unauthorised access, unauthorised use, hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage, deletion or disclosure of **Data** [including data of a third party] stored on **Your Computer System**.

**“Computer Systems”** means any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the internet or internal network or that are connected through data storage or other peripheral devices which are owned, operated, controlled or leased by **You**. **Your Computer System** also includes:

- any **Third Party** computer or electronic device [including mobile phones, tablets or computers owned or controlled by an employee of **Yours**] used to access **Your Computer System** or **Data** contained therein, but only to the extent such computer or device is used for that purpose;
- any employee “Bring Your Own Device” used to access **Your Computer System** or **Data** contained therein, but only to the extent such device is used for that purpose; and
- any cloud service or other hosted computer resources, used by **You** and operated by a **Third Party** service provider under a written contract between such a **Third Party** service provider and **You**.

**“Data”** means any electronically stored digital or digitised information or media stored on **Your Computer System** or an **OSP's Computer System**.

**“Outside Service Provider [‘OSP’]”** means an entity which is not owned, operated or controlled by **You** that **You** have appointed to provide specified services [including webhosting, payment processing and IT security data collection, data processing, delegation of data processing, storage of data and/or deletion or destruction of data] which would otherwise be provided internally whether based on an express contractual agreement, but only to the extent of the provision of such services

**“Third Party”** means any entity or natural person; provided, however, **Third Party** does not mean:

- **You**;
- other entity or natural person having a direct or indirect financial interest or executive role in the operation of the **Business**.

In addition, **We** will not cover **You** for any **Claim**, including the costs and expenses incurred in the defence, settlement or investigation of a **Claim** arising from monetary loss sustained from **Social Engineering Fraud**.

**Social Engineering Fraud** means a misrepresentation of fact or an intentional, malicious, wilful or fraudulent act, undertaken by a third party that misleads **You** and directly results in **Your**, or that of **Your** customers, money or securities or other assets being transferred, disbursed, paid, delivered, altered, corrupted or lost.

## SANCTIONS

- 4.7 arising from any **Security** being deemed to provide cover and any **Security** being liable to pay any **Claim** or **Policy Claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **Claim** or **Policy Claim** or provision of such benefit would expose that **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.

### 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.

<b>8.0 ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.8 – TAX AUDIT EXPENSES</b>
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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 The Insurance Council of Australia Limited has developed the General Insurance Code of Practice [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](http://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 CGC go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

## SERVICE OF SUIT

- 9.16 The Security agrees that:
- (i) if a dispute arises under this policy, this policy will be subject to Australian law and practice and the Security will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
  - (ii) any summons notice or process to be served upon the Security may be served upon:  
*Lloyd's Underwriters' General Representative in Australia,  
Suite 1603, Level 16,  
1 Macquarie Place,  
Sydney NSW 2000.*  
who has authority to accept service on behalf of the Security;
  - (iii) if a suit is instituted against any of the Security, all the Security participating in this policy will abide by the final decision of such Court or any competent Appellate Court. In the event of a Claim arising under this policy immediate notice should be given to:  
*Eugenia Martinez,  
Claims Manager,*

*Nova Underwriting Pty Ltd.  
Email: eugenia@novaunderwriting.com.au  
Telephone: (02) 9226 7801*

## COMPLAINTS

9.17 If **You** have any concerns, or wishes to make a complaint in relation to this policy, **Our** services, or **Your Claim**, please let **Us** know, and **We** will attempt to resolve **Your** concerns in accordance with **Our** Internal Dispute Resolution procedure. Please contact **Us** in the first instance:

*Eugenia Martinez,  
Nova Underwriting Pty Ltd.  
Email: eugenia@novaunderwriting.com.au  
Telephone: (02) 9226 7801  
Post: Suite 34, Level 7, 88 Pitt Street, Sydney NSW 2000.*

**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 the complaint to **Your** satisfaction, **We** will escalate the 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: idraustralia@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 the complaint to the Australian Financial Complaints Authority (AFCA), if the 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*

The complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If the 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.

## 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:** the subscribing [re]insurers' obligations under contracts of [re]insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing [re]insurers are not responsible for the subscription of any co-subscribing [re]insurer 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.