

Superannuation Trustees Liability Insurance [06/08]

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

1.0 INSURING CLAUSES

TRUSTEE'S LIABILITY

- 1.1 We will cover the **Trustees** for **Loss** arising from any **Claim** first made against them and reported to **Us** during the **Insurance Period** arising from any **Trustee Act**, unless the **Employer** and/or the **Trust** is providing them with indemnity for such **Loss**.

TRUST/EMPLOYER REIMBURSEMENT

- 1.2 We will cover the **Employer** and/or the **Trust** for payments it is permitted or required by law to make on behalf of the **Trustees** for **Loss** arising from any **Claim** first made against the **Trustees** and reported to **Us** during the **Insurance Period** arising from any **Trustee Act**.

FIDELITY LOSS

- 1.3 We will cover the **Trustees** 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.

2.0 AUTOMATIC EXTENSIONS

These extensions ONLY apply to the Insuring Clauses quoted in the extension, but other than Automatic Extension 2.12 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 :

LOSS OF DOCUMENTS

- 2.1 We will cover the **Trustees** for the costs and expenses reasonably incurred by them in replacing or restoring lost or damaged **Documents** where such loss or damage is first discovered and reported to **Us** during the **Insurance Period**.

Automatic Extension 2.1 only applies to Insuring Clauses 1.1 and 1.2.

EXTENDED REPORTING PERIOD

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

2.2.1 this policy is not renewed or replaced with similar insurance;and

2.2.2 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 2.2 applies to all Insuring Clauses.

SPOUSE COVER

2.3 Any **Claim** brought against a **Trustee's** lawful spouse arising from a **Trustee Act** committed by a **Trustee**, will be covered by this policy to the same extent as if the **Claim** had been brought against the **Trustee**.

Automatic Extension 2.5 only applies to Insuring Clauses 1.1 and 1.2.

ESTATES, HEIRS and LEGAL REPRESENTATIVES

2.4 Any **Claim** brought against a **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 **Trustee**.

Automatic Extension 2.4 only applies to Insuring Clauses 1.1 and 1.2.

INDEMNITY PRESERVATION

2.5 If the **Trust** and/or the **Employer** is permitted or required by law to indemnify a **Trustee** for **Loss** arising from a **Claim** but fails to do so, then **We** will pay such **Loss** on behalf of the **Trustee** . If **We** do this, the **Trust** and /or **Employer** [as relevant] will be liable to reimburse **Us** for such payments up to the amount of any **Excess** applicable to Insuring Clause 1.2.

Automatic Extension 2.5 only applies to Insuring Clause 1.1.

SEVERABILITY and NON-IMPUTATION

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

Automatic Extension 2.9 applies to all Insuring Clauses.

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 and 1.2.

INQUIRIES

- 2.11** **We** will pay **Defence Costs** incurred by a **Trustee** in attending any official investigation, examination, inquiry or other proceedings relating to the affairs of the **Superannuation Fund**, but only if:
- notice to attend the proceedings was first received by **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 and 1.2.

AUTOMATIC REINSTATEMENT

- 2.12** 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 2.12 applies to all Insuring Clauses.

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

3.1 ASBESTOS

arising from asbestos.

PERSONAL PROFIT and CONDUCT

3.2 arising from:

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

3.2.2 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 **3.2.1** and **3.2.2**.

This exclusion will not apply to Insuring Clause 1.3.

KNOWN CLAIMS or CIRCUMSTANCES

3.3 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

3.3 for damage to, or destruction of, or loss of use of, tangible property EXCEPT as provided under Insuring Clause 1.3.

BODILY INJURY

3.4 for bodily injury, sickness, disease, emotional distress, mental injury or anguish, or death of any person.

USA/CANADA - JURISDICTION

3.5 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.

POLLUTION

3.6 arising from **Pollution**.

NUCLEAR

3.6 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

- 3.7 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

- 3.8 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.

CONTRACTUAL LIABILITY

- 3.9 any obligation assumed by the **Trustees** through a warranty, guarantee, contract or indemnity [excluding the indemnity referred to in Insuring Clause 1.1] UNLESS such obligation would have existed independently of such assumption OR the obligation was assumed in accordance with the trust deed governing the operations of the **Trust**.

4.0 ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.3 - FIDELITY

Under Insuring Clause 1.3 , We will not cover:

CONSEQUENTIAL LOSS

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

DISCOVERY OUTSIDE INSURANCE PERIOD

- 4.2 **Fidelity Loss** that is not first **Discovered** during the **Insurance Period** or during any extended reporting period purchased under Automatic Extension 2.2 [EXTENDED REPORTING PERIOD].

TERRITORIAL LIMITS

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

TRADING LOSSES

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

CONFIDENTIAL INFORMATION

- 4.5 **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

- 4.6 **Fidelity Loss** caused by any person after **Discovery** of a **Dishonest Act** by that person.

5.0	CONDITIONS
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REPORTING CLAIMS

- 5.1 As soon as possible, and within the **Period of Insurance** [or within any extended reporting period under Automatic Extension 2.2 [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

- 5.2 **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

- 5.3 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

- 5.4 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

- 5.5** 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.

SUBROGATION

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**.

GOVERNING LAW

- 5.6** 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

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

CONSIDERATION/RELIANCE

- 5.8** 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

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

HEADINGS

- 5.10** 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

- 5.11** The **Insured** 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.

SERVICE OF SUIT

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

Lloyd's Underwriters General Representative in Australia
Suite 2, Level 21, Angel Place
123 Pitt 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 **Insured's** request to give a written undertaking to the **Insured** that they will enter an appearance on behalf of the **Security**.

GENERAL INSURANCE CODE of PRACTICE

- 5.13 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
Suite 2, Level 21, Angel Place
123 Pitt 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.

6.0 LIMITS, EXCESSES and MULTIPLE CLAIMS

LIMITS

- 6.1 **Our** aggregate limit of liability for all **Loss** and **Fidelity Loss** arising from all **Claims** and **Policy Claims** under this policy is the **Sum Insured** [subject to the sub-limit stated in Item [E] of the Schedule], being the amount stated in Item [D] of the Schedule. The sub-limit of liability stated in Item [E] 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

- 6.2 The **Excess**, being the amount stated in Item [F] of the Schedule, shall apply to the **Loss** and **Fidelity Loss** arising from each **Claim** or **Policy Claim**. EXCEPT as provided under Automatic Extension 2.5 [INDEMNITY PRESERVATION], **We** will have no obligation to pay any **Loss** below the **Excess** for each **Claim** or **Policy Claim**.

MULTIPLE CLAIMS

- 6.3 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**.

7.0 DEFINITIONS

- 7.1 **Claim[s]** means a written demand for compensation or damages, or civil or criminal proceedings.
- 7.2 **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 **Trustee**.
- 7.3 **Discovered** means when any **Trustee** [not in collusion with another **Trustee** 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.
- 7.4 **Dishonest Act** means any fraudulent or dishonest act committed by a **Trustee** [alone or in collusion with others] with intent to cause the **Superannuation Fund** to sustain a **Fidelity Loss**.
- 7.5 **Documents** means anything upon which information is recorded and which is the property of the **Trustees** and relates to the **Superannuation Fund**. **Documents** does not include money, securities, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 7.6 **Employer** means the organization named in Item [B] of the Schedule.
- 7.7 **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 **Superannuation Fund**, or in its care, custody or control and for which it is legally liable. **Fidelity Loss** does not include wages, **Benefits**, salaries or other remuneration benefits of **Trustees**.
- 7.8 **Insured** means the **Employer** and any **Trustee**.
- 7.9 **Insured Act** means a **Trustee Act** or a **Dishonest Act**.
- 7.10 **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.
- 7.11 **Insurance Period** means the period stated in Item [B] of the Schedule.
- 7.12 **Policy Claim** means a claim on this policy for **Fidelity Loss** under Insuring Clauses 1.3.

- 7.13 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.
- 7.14 Security** means certain Underwriters at Lloyds, each of whom [including their executors and administrators] is only liable for their share of any loss payable by this policy. Details of each syndicate and its share can be obtained from
- 7.15 Superannuation Fund** means a superannuation fund administered by a **Trustee** for the benefit of the employees of the **Employer**.
- 7.16 Trustee** means a natural person who was, is or becomes a trustee of a **Superannuation Fund**.
- 7.17 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**.
- 7.18 Us, We and Our** means Nova Underwriting Pty Ltd on behalf of the **Security**.
- 7.19 USA or Canada** means the territories, possessions and states of the United States of America or Canada.

SCHEDULE
SUPERANNUATION TRUSTEES LIABILITY INSURANCE – 06/08
Nova Underwriting Pty Ltd

Attaching to and forming part of policy #

ITEM [A]: Superannuation Fund [s] :

ITEM [B]: Employer :

ITEM [C]: Insurance Period:...../...../..... to/...../.....

ITEM [D]: Sum Insured: \$.....

ITEM [E]: Fidelity Loss sub-limit: \$.....

ITEM [F]: Excess \$..... EXCEPT for Claims under Insuring Clause 1.1 and Automatic Extension 2.11.

SPECIAL CONDITIONS:

Signed for and on behalf of Nova Underwriting Pty Ltd:

..... on / /