

Managerial Liability Plus

Yachting Australia

# Managerial Liability Plus

## Schedule

Item 1:

**Policyholder**

**Policyholder** Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Item 2:**

**Limit of Liability**

\_\_\_\_\_

Item 3:

**Policy Period**

From: 16.00 hours on \_\_\_\_\_  
To: 16.00 hours on \_\_\_\_\_

Item 4:

Deductible

Per Rating Matrix

Item 5:

**Prior and Pending  
Litigation date**

Item 6:

Additional Premium:

AUD \_\_\_\_\_

Applicable Tax:

AUD \_\_\_\_\_

Applicable Stamp Duty:

AUD \_\_\_\_\_

Total Payable:

AUD \_\_\_\_\_

Item 7:

**Underwriters**

Item 8:

Fidelity extension

*Included:* YES / NO

*Fidelity Premium*

20% of the Additional Premium  
indicated in Item 6 above

*Fidelity Sublimit*

25% of the **Limit of Liability** up to a  
maximum of AUD 1,000,000

*Fidelity Deductible*

AUD 10,000 each and every claim

# Managerial Liability Plus

## Preamble

This insurance is provided on a “Claims Made” basis and will only provide an indemnity for **Claims** first made during the **Policy Period** and notified in accordance with the Notification Provisions.

This insurance is provided in good faith based on the information provided to **Underwriters**.

## Section 1 – Insuring Clause

**Underwriters** will pay **Loss** on behalf of the **Directors** to the extent that the **Directors** have not been indemnified by the **Company**. To the extent that the **Directors** have been indemnified for **Loss** by the **Company**, **Underwriters** will reimburse the **Company**.

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## Section 2 – Extensions

### 2.1 Spousal Coverage

The **Underwriters** will pay for **Loss** in respect of a claim first made against the lawful spouse (whether such status is deemed such by reason of any statutory or common law or otherwise of any applicable jurisdiction in the world) or domestic partner of a **Director** during the **Policy Period** and notified to the **Underwriters** during the **Policy Period** provided such claim is made solely because of his or her status as the lawful spouse or domestic partner of that **Director** and solely in respect of a **Wrongful Act** of such **Director**.

### 2.2 Heirs and Estates Coverage

The **Underwriters** will pay for **Loss** in respect of a claim first made against the administrators, estates, heirs, legal representatives, executors or assigns of any deceased, incompetent, insolvent or bankrupt **Director**, or such **Director's** estate, for a **Wrongful Act** of such **Director**.

### 2.3 Retired Directors Coverage

If this extension to your Main Policy is not renewed or replaced with any other form of insurance affording similar directors' and officers' liability cover, coverage hereunder shall be extended for a period of 72 months from the effective date of such non-renewal to provide cover for any **Claim** commenced against any **Director** who had voluntarily ceased to hold such office prior to the date of expiry of the **Policy Period**.

### 2.4 Extended Reporting Period Coverage

If this extension to your main policy is not renewed or replaced with any other form of insurance affording similar directors' and officers' liability cover then the **Policyholder** and the **Directors** shall have the right to purchase (at a specified additional premium) an extended reporting period immediately following the expiry of the **Policy Period** during which reporting period any **Claim** received in respect of a **Wrongful Act** that was committed or attempted prior to the expiry of the **Policy Period** shall be recognized by **Underwriters** as if such **Claim** were made during the **Policy Period**. The extended reporting periods available are listed below alongside the applicable additional premium.

12 months – 40%

A **Director** or the **Policyholder** must elect to purchase the required extended reporting period by informing the **Underwriters** in writing within 30 days of the expiry of the **Policy Period** and must pay the additional premium due within 60 days of the expiry of the **Policy Period**. Such additional premium is non-refundable and the extended reporting period purchased is not cancellable by any party except for the non-payment of the additional premium.

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## 2.5 Outside Directorships

Coverage shall extend to any **Outside Directorships**.

## 2.6 Advancement of **Defence Costs**

**Underwriters** shall prior to the final settlement of any **Claim** advance **Defence Costs** as covered under this Policy, within 30 days of receipt of an invoice for same from a **Director** or the **Policyholder**

## 2.7 Emergency Defence Costs

If, because of an emergency, the **Underwriters** prior written consent to any **Defence Costs** cannot be requested, **Defence Costs** can be incurred without that consent for a period of thirty days immediately following the date on which the **Claim** was first made.

## 2.8 Loss Mitigation Costs

The **Underwriters** will pay the reasonable and necessary fees costs and expenses incurred with their prior written consent, which shall not be unreasonably delayed or withheld, by the **Directors** or the **Company** in the mitigation of any matter which may give rise to a **Loss**, or in the attempt to reduce the potential quantum of a **Loss**. Such fees, costs and expenses shall only be covered hereunder up to a limit of AUD 250,000, which limit is part of and not in addition to the **Limit of Liability**.

## 2.9 Public Relations Costs

The **Underwriters** shall pay the reasonable fees and expenses of outside public relations professionals incurred by a **Director** in order to mitigate the damage to such **Director's** reputation due to a **Claim**, or to a circumstance that may give rise to a **Claim** as objectively established by media reports or other publicly available third-party data. Such fees and expenses of outside public relations professionals shall only be covered hereunder up to a limit of AUD 250,000, which limit is part of and not in addition to the **Limit of Liability**.

## 2.10 Crisis Management Costs

The **Underwriters** shall pay the reasonable and necessary fees costs and expenses incurred with their prior written consent, which shall not be unreasonably delayed or withheld, by the **Directors** or the **Company** with respect to obligations to an external crisis management services provider in relation to an event involving any event that materially affects the **Company's** status as a "going concern" or involving the unexpected death or disablement of a **Director**.

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## 2.11 Employee Fidelity

The **Underwriters** shall indemnify the **Company**, or pension, benefit, welfare or superannuation plan or fund of the **Company**, for any direct financial loss of Property caused directly by Theft or Forgery by a **Director** (including employees) whether acting alone or in collusion with others.

For the sake of this extension, the following definitions shall also apply:

Forgery means the signing of another person's name with the intent to deceive and shall include mechanically or electronically reproduced as well as handwritten signatures.

Property means any money, securities, interests and other property which is:

- a) owned by the **Company**, or
- b) is in the care, custody and/or control of the **Company** and for which the **Company** is liable in the event of loss.

Theft means the unlawful, criminal, dishonest or malicious taking of, destruction of or transfer of Property which is undertaken with the intent to:

- a) bring financial benefit to the person or persons taking, destroying or transferring such Property (and/or their associates); and/or
- b) cause such loss to the **Company**.

For the sake of this extension, the following definitions shall also apply:

In no event shall **Underwriters** indemnify the **Company** for any related consequential loss.

**Underwriters** shall not be liable for any act of Theft or Forgery committed by any **Director** (including employees), after the date on which the **Company** or any executive or non-executive director of **Company** became aware of any similar act of Theft or Forgery committed by such same person.

**Underwriters** shall not be liable for any loss by way of Theft or Forgery sustained prior to the Inception of this Policy.

This extension shall only be applicable if so indicated in Item 8 of the Schedule and the required Fidelity Premium remitted to **Underwriters**.

This extension shall be subject to the sub-limit of liability indicated in Item 8 of the Schedule. As indication in Section 6.3, this sub-limit of liability shall be part of and not in addition to the limit of liability detailed in Item 2 of the Schedule.

This extension shall be subject to the deductible indicated in Item 8 of the Schedule in respect of each and every claim for which indemnification is sought under this extension.

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## Section 3 – Exclusions

### 3.1 Bodily Injury and Property Damage

**Underwriters** shall not be liable for **Loss** arising from or attributable to any **Claim** for any physical or mental injury to a natural person (except to the extent that such injury is the subject of a **Claim** alleging any breach of any Employment Laws), nor shall **Underwriters** be liable for **Loss** arising from or attributable to any **Claim** for physical damage or destruction or loss of use of any tangible property. However this exclusion shall not apply to **Defence Costs** that are incurred in relation to any Occupational Health and Safety law or regulation.

### 3.2 Prior and Pending Litigation

**Underwriters** shall not be liable for **Loss** arising from or attributable to any matters which are the basis of, or a significant factor in, any legal or regulatory proceedings or investigations involving a **Director** which are served or commenced prior to the **Prior and Pending Litigation Date**.

### 3.3 Fraudulent Acts

**Underwriters** shall not be liable for **Loss** of a **Director** arising from or attributable to any **Claim** that is based on or attributable to dishonest, unlawful or fraudulent act or omission of such **Director**. This exclusion shall only apply if it is established by a final judgement or adjudication that the relevant conduct occurred.

### 3.4 Pollution

**Underwriters** shall not be liable for **Loss** of a **Director** arising from or attributable to any **Claim** that is based on or attributable to **Pollution**, nor shall **Underwriters** be liable for **Loss** incurred in the prevention, removing, nullifying or clean-up of such **Pollution**. However this exclusion shall not apply to **Defence Costs**.

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## Section 4 - Definitions

**Claim** means

- (a) any written demand against a **Director** alleging a **Wrongful Act** and notice of which is first received during the **Policy Period**.
- (b) any civil, regulatory, administrative or arbitral proceeding brought against a **Director** alleging a **Wrongful Act** and notice of which is first received during the **Policy Period**.
- (c) any criminal proceeding brought against a **Director** alleging a **Wrongful Act** and notice of which is first received during the **Policy Period**.
- (d) any **Preliminary Investigation** and notice of which is first received during the **Policy Period**
- (e) any Extradition Proceedings brought against such **insured** following:
  - (i) receipt by a **Director** of an official notice in writing from the responsible governmental authority advising of a request for extradition being made against them; or
  - (ii) the execution of a warrant for arrest of such **Director**, whichever is the earlier.

Extradition proceedings includes, but is not limited to any appeal relating thereto, judicial review applications challenging the designation of any territory for the purposes of any extradition law, challenging or appealing any extradition decision by the responsible governmental authority including the designation of citizenship in relation to extradition proceedings or applications to the High Court or Federal Court of Australia or to any similar court or to the Office of the High Commissioner for Human Rights of the United Nations with respect to extradition proceedings.

**Company** means the **Policyholder** and any **Subsidiary**.

**Defence Costs** means the reasonable fees costs and expenses incurred by a **Director** in connection with a **Claim** and which have been consented to in writing by **Underwriters**. For the sake of clarity, the term **Defence Costs** includes those fees costs and expenses incurred in relation to work carried out by any registered tax specialist in connection with any audit or investigation by the Australian Taxation Office.

**Director** means

- (a) any natural person who was, is or shall be a director, officer, official or employee, whether de jure, de facto or shadow of the **Company** in his or her capacity as such or in their capacity as a trustee or fiduciary of any pension, benefit, welfare or superannuation plan or fund of the **Company**.
- (b) any person acting as an official of the **Company** in a voluntary capacity whether paid or unpaid at the specific request and direction of the **Company**.

**Limit of Liability** means the maximum amount of liability of the **Underwriters** under this extension to your Main Policy as specified in Item 2 of the Schedule.

**Loss** means any **Defence Costs**, or any other amounts including damages, judgements and settlements (which include punitive and exemplary damages where insurable under the applicable law which is most favourable to a **Director**) for which a **Director** is legally liable on account of a **Claim** and which have been consented to in writing by **Underwriters**.

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**Loss** shall not include:

- (a) any criminal fines or penalties,
- (b) any civil, administrative or pecuniary fines or penalties in excess of AUD 250,000 per single **Loss**,
- (c) any amounts attributable to taxes or tax arrears (unless specifically covered elsewhere in this policy).

**Outside Directorship** means the position of **Director**, trustee, governor, councillor, or the holder of an equivalent position in any jurisdiction held by a **Director** in an **Outside Entity** provided that such position is assumed and maintained with the knowledge and consent of the **Company**

**Outside Entity** means any organisation, other than the **Company**, conducting a similar business or is related by formal agreement to the **Company**

**Policy Period** means that period of time from inception until expiry as detailed in Item 3 of the Schedule

**Policyholder** means the entity detailed in Item 1 of the Schedule

**Pollution** means the discharge, dispersal, release or escape of any solid, liquid, gaseous, thermal or radioactive pollutant or contaminant into or upon land, the atmosphere, or any water course or body of water.

**Preliminary Investigation** means any formal investigation, inquiry or hearing by a body legally authorized to conduct such investigation, inquiry or hearing at which a **Director** is required or requested to attend or provide information or statements to and which seeks to investigate the affairs of a **Director** or the **Company** or the industry in which the **Company** operates but which investigation, inquiry or hearing has not yet identified a **Wrongful Act**.

**Prior and Pending Litigation Date** means that date specified in Item 5 of the Schedule.

**Subsidiary** means any entity in which, at the time of the relevant **Wrongful Act**, the **Policyholder** owns or controls, directly or indirectly 50% or more of the equity, voting shares or board of management. Any entity which becomes a **Subsidiary** pursuant to this definition after the inception of the **Policy Period** and which entity is publicly listed, and/or domiciled in the United States of America and/or has assets in excess of 50% of the consolidated assets of the **Policyholder** shall only be deemed a **Subsidiary** upon written agreement from **Underwriters** who reserve the right to charge an additional premium in respect of such entity and/or amend the terms and conditions of coverage with respect to such entity.

**Underwriter** means those insurers detailed in Item 7 of the Schedule.

**Wrongful Act** means any actual, alleged or proposed act or omission, error, misstatement, misleading statement, breach of duty, care or trust or neglect that is committed or attempted by a **Director**.

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## Section 5 – Notification Provisions

Notice of a **claim** or of circumstances which may result in a **claim** shall be given in writing (whether by letter, facsimile, email or other written format) to:

Masterman Insurance Brokers Pty Ltd  
19 Agnes Street, East Melbourne Vic 3002  
Telephone no. 03 9658 9200  
Fax no. 03 9639 4977  
Email: admin@masterman.com.au

on behalf of **Underwriters**.

If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

The **Policyholder** shall give written notice of any **Claim** to the **Underwriters** as soon as practicable and either;

- (i) during the **Policy Period** or extended reporting period as provided in Section 2.4 if such period is purchased; or
- (ii) within thirty (30) days after the end of the **Policy Period** or the extended reporting period as provided in Section 2.4 if such period is purchased, as long as such **Claim** is reported no later than thirty (30) days after the date such **Claim** was first made against an **Director**.

If, during the **Policy Period** or during the extended reporting period as provided in Section 2.4 if such period is purchased, written notice of a **Claim** against an **Director** is given to the **Underwriters** pursuant to the terms and conditions of this Policy, then any **Claim** arising out of, based upon or attributable to the facts alleged in the **Claim** previously notified to the **Underwriters** or any **Claim** alleging a **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged in the previously notified **Claim**, shall be considered made against the **Director** and reported to the **Underwriters** at the time the first notice was given.

If, during the **Policy Period**, the **Policyholder** or **Director** becomes aware of any fact or circumstance which may reasonably be expected to give rise to a **Claim** being made against the **Director**, and the **Policyholder** or **Director** elects to give notice in writing to the **Underwriters** of the fact or circumstance of the potential **Wrongful Acts** together with the reasons for anticipating a **Claim** with full particulars as to dates and persons involved, then any **Claim** which is subsequently made against a **Director** and reported in writing to the **Underwriters** arising out of, based upon or attributable to that fact or circumstances or alleging a related **Wrongful Act** alleged or contained in such fact or circumstance, shall be considered made against the **Director** and reported to the **Underwriters** at the time the notice of fact or circumstance was first given.

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## Section 6 – General Conditions

### 6.1 Material Information

It is understood by all parties that this Policy has been issued in reliance upon certain information that has been provided by the **Policyholder** to the **Underwriters**.

### 6.2 Severability

This Policy is a several policy in respect of each **Director**. As such, any statements or actions or omissions made by, or any knowledge possessed by, or any ignorance attributable to any **Director** or **Company** shall in no event be imputed to any other **Director** or **Company** in order to determine any aspect, coverage or interpretation of this Policy.

### 6.3 Limit of Liability

The **Limit of Liability** is the maximum aggregate amount payable by the **Underwriters** under this extension to your Main Policy. It is an aggregate limit of liability and is inclusive of all **Loss**, any and all extensions to coverage and any applicable sub-limits of liability. The **Limit of Liability** is separate from the limits available under your Main Policy.

### 6.4 Deductible

This Policy shall only provide coverage in excess of the Deductible specified in Item 4 of the Schedule. Such deductible shall apply as applicable for each and every separate **Claim**. For the purpose of this Clause it is agreed that continuous or repeated or related **Wrongful Acts** are deemed to constitute a single **Wrongful Act**. It is also understood that in no event shall a deductible be applicable in respect of:

- (a) any **Loss** for which the **Directors** have not been indemnified by the **Company**
- (b) Extensions 2.3, 2.8, 2.9 and 2.10
- (c) **Preliminary Investigations**
- (d) Extradition Proceedings.

If Extension 2.11 is applicable then the Deductible detailed in Item 8 of the Schedule shall apply.

### 6.5 Authorization of the Policyholder

It is agreed that the **Policyholder** shall act on behalf of all **Directors** and **Companies** with respect to the exercise of all their rights and the discharge or all their duties in respect of this Policy, except for instances where, pursuant to any national, territorial or state law, a **Director** is obliged to interact with the **Underwriters**.

### 6.6 Duties and Obligations

**Underwriters** have a duty to indemnify under this Policy and do not assume any automatic duty to defend. The **Directors** and the **Company** have the duty to defend any **Claim** and agree not to do anything that intentionally serves to increase any potential **Loss**. The **Underwriters** maintain the right to actively and effectively participate in the defence and settlement of any **Claim**.

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The **Directors** and the **Company** agree not to incur **Loss**, not to waive any right of recovery and not to settle any **Claim** without the written consent of the **Underwriters** which shall not be unreasonably withheld or delayed.

## 6.7 Other Insurance

This extension to your Main Policy is intended to provide primary insurance coverage in respect of directors' and officers' liability. However should any payments collectable under this Policy also be collectable under any more relevant insurance policy or guarantee, then this Policy shall only pay in excess of such other insurance. Where this Policy and any other insurance policy or guarantee both provide equally valid coverage, then all parties concerned shall use their best efforts to determine a fair allocation between the available insurances and/or guarantees.

## 6.8 Cancellation

This Policy may not be cancelled by **Underwriters** except for the non-payment of premium. In such circumstance, the **Underwriters** will issue written notice of cancellation providing 15 days from the date of issuance for **Underwriters** to receive the required premium. Should **Underwriters** not have received the premium on or before this 15<sup>th</sup> day, then the Policy will be cancelled ab initio on such date.

This Policy may be cancelled by the **Policyholder** by providing the **Underwriter** with 30 days notice of the intent to cancel the Policy. Upon cancellation, **Underwriters** shall reimburse the **Policyholder** that proportion of the paid premium representing the period of time from the date of cancellation to the natural expiry of the **Policy Period** calculated on a pro-rata basis.

## 6.9 Non-rescindability

The **Underwriters** agree to waive any rights that they may have to void, rescind or annul any **Director's** individual interest in this Policy as a result of any innocent or negligent non-disclosure or misrepresentation.

## 6.10 Allocation

**Loss** shall only be covered under this Policy to the extent that it is attributable to acts and/or persons covered under this Policy. Consequently, should any **Claim** be in part attributable to uncovered acts or persons then the **Underwriters**, the **Policyholder** and the relevant **Directors** shall use their best efforts to agree a fair and proper allocation of coverage under this Policy having regard to the relative legal and financial exposures of, and the relative benefits to be obtained by, the relevant parties. In the event that the parties are unable to agree upon a fair and proper allocation, then the matter shall be dealt with according to the Disputes resolution section of this Policy. Until such time as the parties agree upon a fair and proper allocation, the **Underwriters** shall pay **Loss** based upon their own reasonable assessment of allocation.

## 6.11 Subrogation

In the event of a payment under this Policy to the **Directors** or the **Company**, **Underwriters** shall be, subject to the Insurance Contracts Act 1984, subrogated to all the **Directors'** or the **Company's** rights of recovery against all persons and organisations and shall, at the cost of the **Underwriters**, execute and deliver any relevant instruments and papers and do all that may be reasonably requested of them in order to assist **Underwriters** in the exercise of such rights.

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## 6.12 Insurance Contracts Act 1984

Nothing contained in the Policy shall be construed to reduce or waive either the **Directors'** or the **Company's** or the **Underwriters'** privileges, rights or remedies available under the Insurance Contracts Act 1984.

## 6.13 Territorial Scope

This Policy shall not be limited territorially and shall apply worldwide.

## 6.14 Policy Interpretation

Unless the context otherwise requires, this Policy shall be interpreted on the understanding that:

- (a) references to the singular include the plural and vice versa;
- (b) headings are descriptive only and not an aid to interpretation;
- (c) all references to specific legislation include amendments to and re-enactments of such legislation and also include any equivalent legislation in the relevant territory.
- (d) the male includes the female and neuter; and
- (e) references to positions, offices and titles shall include their equivalent in the relevant territory.

## 6.15 Governing Law

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the Commonwealth of Australia and the Australian State or Australian Territory in which this Policy is issued, and any disputes relating thereto shall be dealt with according to such law.

## 6.16 Dispute Resolution

In the event of a dispute arising under this Policy, the **Underwriters** at the request of the **Policyholder** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

Any summons notice or process to be served upon the **Underwriters** may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21 Angel Place, 123 Pitt Street, SYDNEY. NSW. 2000.  
Telephone No: (02) 9223 1433 Facsimile No: (02) 9223 1466

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

If a suit is instituted against any one **Underwriter**, all **Underwriters** hereon will abide by the final decision of such Court or any competent Appellate Court.

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## 6.17 Complaints

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred to:

Masterman Insurance Brokers Pty Ltd  
19 Agnes Street, East Melbourne Vic 3002

Telephone no. 03 9658 9200  
Fax no. 03 9639 4977  
Email: admin@masterman.com.au

in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia,  
Suite 2, Level 21 Angel Place,  
123 Pitt Street,  
SYDNEY. NSW. 2000.

Telephone No: (02) 9223 1433  
Facsimile No: (02) 9223 1466

who will refer your dispute to the Complaints Department at Lloyd's

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.