

Management Liability Insurance

Policy Wording

Wording Document

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Important Information

Please read the following information

A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge;
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

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

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

B. Claims Made and Notified Policy

This policy provides management liability Insurance on a "Claims Made and Notified" basis. This means that the policy covers you for claims made against you and notified to the insurer during the period of cover. It does not provide cover for:

- claims arising from an event which occurred before the policy's "retroactive date" where such a date is specified in the schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the period of cover);
- claims made, threatened or intimated before the period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy;
- claims arising from circumstances noted on the proposal form or any previous proposal form.

C. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

D. Privacy

Berkley Insurance Australia seeks at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information

The information contained in this document and any other documents provided to us will be dealt with in accordance with our Privacy Policy.

Disclosure of Information that you provide to us

Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policy. Without limiting the application of the Policy Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with us you consent to Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above. You warrant to us that where you provide us with personal information that you have collected from other individuals:

- That the information has been collected in accordance with the Privacy Act 1988.
- That we are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice. You, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

Cross Border

We will share Your personal information with the Berkley group of companies. Our data containing Your information is stored in our data centre using dedicated Berkley hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on our website www.berkleyinaus.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to australiaclaims@berkleyinaus.com.au.

Contact Details

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In consideration of payment of the Premium and in reliance on the proposal form and any other information submitted by or on behalf of the Insured and / or the Company, We will indemnify the Insured and / or the Company in accordance with, and subject to, the terms, conditions and exclusions of this Policy.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect.

1. Insuring Clauses

1.1. Directors and Officers Liability

We shall pay to or on behalf of the Insured Loss arising from any Claim for a Wrongful Act which is first made against the Insured during the Policy Period and notified to Us in accordance with the terms of this Policy, except when and to the extent that the Company has indemnified the Insured.

1.2. Company Reimbursement

We shall pay on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against the Insured during the Policy Period and notified to Us in accordance with the terms of this Policy, but only when and to the extent that the Company is permitted or legally obligated to indemnify the Insured.

1.3. Company Liability

We shall pay on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against the Company during the Policy Period, if notice thereof is provided to Us in accordance with the terms of this Policy.

2. Extensions

Any sub-limit of indemnity specified in this Policy shall be Our maximum aggregate liability under any cover which is subject to a sub-limit, irrespective of the number of claims, the amount claimed or whether more than one Insured is named in any Claim. Unless otherwise specified elsewhere in this Policy, any sub-limit shall be part of and not in addition to the aggregate Limit of Indemnity shown in the Policy Schedule.

2.1. Advancement of Costs and Emergency Defence Costs

Under insuring clause 1.1 (Directors and Officers Liability), insuring clause 1.2 (Company Reimbursement) and insuring clause 1.3 (Company Liability), We will, to the fullest extent permissible by law and subject to the Limit of Indemnity and any applicable deductible, advance Costs resulting from a Claim prior to the final settlement of said Claim.

Notwithstanding any provision in the Policy to the contrary, if it is not possible for the Insured and / or Company to obtain consent prior to the incurring of Costs, We will temporarily waive prior consent as long as Our consent is obtained within thirty days of the first of such Costs being incurred.

Such advance payments of Costs shall be repayable to Us by the Insured and the Company severally according to their respective interests, in the event and to the extent that it is determined that they shall not be entitled under this Policy to payment of such Costs.

2.2. Pollution Costs

- (a) In accordance with insuring clause 1.1 (Directors and Officers Liability) and/or insuring clause 1.2 (Company Reimbursement), We shall pay Costs in respect of any Claim, or Inquiry by an official body, related to a Pollutant up to the amount of the sub-limit of indemnity for all payments under this extension specified in the Policy Schedule.
- (b) In accordance with insuring clause 1.3 (Company Liability), We shall pay Costs in respect of any Claim, or Inquiry by an official body, related to a Pollutant up to the amount of the sub-limit of indemnity for all payments under this extension specified in the Policy Schedule.

The coverage provided by extension 2.2 Pollution Costs shall only apply to a Claim first made, or to an Inquiry where it is commenced and the notice legally requiring the attendance of the Insured is served, in the Policy Period.

2.3. Fines and Penalties

- (a) In accordance with insuring clause 1.1 (Directors and Officers Liability) and/or insuring clause 1.2 (Company Reimbursement), We shall pay any legally permissible pecuniary or administrative fines or penalties in respect of a Claim which the Insured is ordered to pay pursuant to the laws of the Commonwealth of Australia and/or New Zealand.
- (b) In accordance with insuring clause 1.3 (Company Liability), We shall pay any legally permissible pecuniary or administrative fines or penalties in respect of a Claim which the Company is ordered to pay pursuant to the laws of the Commonwealth of Australia and/or New Zealand, except for any pecuniary penalties or administrative fines or penalties imposed:
 - (i) pursuant to any consumer protection Act;
 - (ii) pursuant to any law regulating air, marine or vehicular traffic;
 - (iii) directly or indirectly as a result of or in connection with a requirement to pay taxes, duties, rates, levies, charges, fees or any other revenue raising measure;
 - (iv) where the Company knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Policy Period that the Company had contravened a law and committed an offence pursuant to that law; or
 - (v) as a result of further Wrongful Acts committed after the Company first knew, or where a reasonable person in the circumstances ought reasonably to have known, that the Company had contravened a law and committed an offence pursuant to that law, and which led to the imposition of increased or additional pecuniary penalties.

Exclusion 4.10 (Bodily Injury or Property Damage) shall not apply to any pecuniary or administrative fines or penalties paid under

this extension resulting from a violation or breach of any Australian or New Zealand workplace health and safety law or regulation. The aggregate sub-limit of indemnity for all payments under this extension, 2.3 (a) and 2.3 (b) inclusive, is the Fines and Penalties sub-limit specified in the Schedule.

2.4. Workplace Health and Safety Costs

- (a) In accordance with insuring clause 1.1 (Directors and Officers Liability) and/or insuring clause 1.2 (Company Reimbursement), We shall pay on behalf of the Insured, Costs incurred as a result of any Inquiry first commenced and served on the Insured in the Policy Period arising out of a violation or breach of any Australian or New Zealand workplace health and safety law or regulation.
- (b) In accordance with insuring clause 1.3 (Company Liability), We shall pay on behalf of the Company, Costs incurred as a result of any Inquiry first commenced and served on the Company in the Policy Period arising out of a violation or breach of any Australian or New Zealand workplace health and safety law or regulation.

The coverage hereunder shall only apply to an Inquiry where it is commenced, and the notice legally requiring the attendance of the Insured and/or the Company is first served, during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension, 2.4 (a) and 2.4 (b) inclusive is the Workplace Health and Safety Costs sub-limit specified in the Schedule.

2.5. Continuous Cover

For the purpose of this extension 2.5 and this extension only, "We" shall extend to mean Berkley Insurance Company (trading as Berkley Insurance Australia) and W. R. Berkley Insurance (Europe) Limited (trading as W. R. Berkley Insurance Australia).

Notwithstanding Exclusion 4.1(c) (Prior and Pending Claims and Circumstances) of this Policy, We will cover the Insured and the Company for any Claim arising from such fact, circumstance, act, omission or claim, where otherwise covered by this Policy, if:

- (a) We were the management liability insurer of the Company and the Insured when the Company and/or the Insured first became aware of such circumstance; and
- (b) We continued without interruption to be the management liability insurer of the Company and the Insured up until this Policy came into effect; and
- (c) had We been notified by the Company and/or the Insured of the circumstance when it or they first became aware of it, the Company and the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy;
- (d) there is an absence of fraudulent noncompliance with the Company's and / or the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Company or the Insured in respect of such facts or circumstances;
- (e) We may reduce Our liability to the extent of any prejudice We may suffer in connection with the Company's or Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period; and
- (f) the Claim or the Inquiry or the circumstance have not previously been notified to Us or any other insurer.

If the Company and/or the Insured were entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Cover extension does not apply.

The Limit of Indemnity provided for Claims covered by this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.5(c) above, or under this Policy. The terms of this Policy otherwise apply.

2.6. General Inquiry Costs

This Policy shall extend to include any reasonable and necessary Costs incurred by or on behalf of any Insured and the Company with Our prior written consent (such consent not to be unreasonably withheld) for legal representation at an Inquiry, where the Inquiry is commenced, and the notice legally requiring the attendance of the Insured is first served, during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the General Inquiry Costs sub-limit of indemnity specified in the Schedule.

2.7. Superannuation Trustees Liability Cover

Notwithstanding any provision to the contrary in Exclusion 4.16 "Superannuation" and/or Definition 3.15 "Director or Officer":

- (a) We shall pay to or on behalf of the Trustee, Loss arising from any Claim for Trustee Breach which is first made against the Insured during the Policy Period and notified to Us in accordance with the terms of this Policy, except when and to the

extent that the Company has indemnified the Insured.

The Deductible applicable to cover provided under extension 2.7.(a) is the Deductible stated in the Schedule next to 1.1 Directors' & Officers' Liability.

- (b) We shall pay on behalf of the Company, Loss arising from any Claim for Trustee Breach which is first made against the Insured during the Policy Period and notified to Us in accordance with the terms of this Policy, but only when and to the extent that the Company is permitted or legally obligated to indemnify the Insured.

The Deductible applicable to cover provided under extension 2.7.(b) is the Deductible stated in the Schedule next to 1.2 Company Reimbursement.

- (c) We shall pay on behalf of the Company, Loss arising from any Claim for a Trustee Breach which is first made against the Company during the Policy Period, if notice thereof is provided to Us in accordance with the terms of this Policy.

The Deductible applicable to cover provided under extension 2.7(c) is the Deductible stated in the Schedule next to 1.3 Company Liability.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Superannuation Trustees Liability sub-limit of indemnity specified in the Schedule.

2.8. Claims Specialist Advice

The Insured on behalf of the Company may contact Us during business hours to access Our claims specialists for one complimentary session of up to sixty (60) minutes of verbal advice in relation to a matter which is covered under this Policy in relation to:

- (a) employment law;
- (b) workplace health and safety law; and
- (c) general commercial law;

concerning the duties and obligations of a director or officer under the relevant law of the Australian State or Territory in which the Company is located.

2.9. Outside Directorships

We shall pay to or on behalf of the Insured Loss arising from any Claim which is first made against the Insured during the Policy Period and notified to Us in accordance with the terms of this Policy, where such Insured, was, is or becomes at the written request of the Company a director, officer or equivalent position in any Outside Entity, provided that:

- (a) the cover provided under this extension applies in excess of any other indemnification provided by the Outside Entity; and
- (b) the cover provided under this extension applies in excess of any other directors and officers liability insurance in force for such Outside Entity; and
- (c) the cover provided under this extension shall not apply in respect of any Claim arising out of, based upon, attributable to or in any way whatsoever connected with:
 - (i) an order being made for the winding up of the Company;
 - (ii) the appointment to the Company of a liquidator or a receiver or an administrator or an administrative receiver or a trustee in bankruptcy or, in the case of a voluntary arrangement, a nominee or a supervisor;
 - (iii) a proposal being made by or to the Company, or by or to its creditors, of a composition of debts or scheme of arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise; or
 - (iv) in any way whatsoever relating to the solvency or insolvency of the Company.

2.10. Extended Reporting Period

In the event that this Policy is not renewed or replaced, other than for non-payment of premium, the Insured and the Company shall have the right to an extension of the cover granted by insuring clause 1.1 (Directors and Officers Liability) and insuring clause 1.2 (Company Reimbursement) of this Policy in respect of any Wrongful Act or other conduct committed or alleged to have been committed prior to the expiry date of this Policy:

- (a) for a period of ninety (90) days from the expiry date of this Policy; or
- (b) upon payment of an additional premium calculated at 100% (one hundred percent) of the Premium shown in the Schedule (plus any applicable other taxes and charges), for a period of three hundred and sixty-five (365) days from the expiry date of the Policy; provided that:

- (i) this extended reporting period is only available if the Insured or the Company notify Us in writing that they wish to exercise the Extended Reporting Period and they pay the additional premium to Us within thirty (30) days of the end of the Policy Period; and
- (ii) the premium shall be deemed to be fully earned at inception of the Extended Reporting Period and is not refundable.

It is understood and agreed that:

- a. the quotation by Us of different premiums, terms, conditions, limitations, exclusions or indemnity limits at renewal does not constitute a refusal to renew;
- b. this extension shall only be granted provided the Insured or the Company cannot effect directors or officers liability insurance, management liability or similar insurance, with any other insurer or underwriter or other similar entity, prior to expiry of this Policy and provided that the Insured or the Company have made reasonable efforts to secure such cover;
- c. this extension is not available if the Policy is cancelled or avoided; and
- d. the Limit of Indemnity stated in the Schedule shall not be increased in any way by the provisions of this extension.

2.11. Retired Directors and Officers

If the Company does not renew or replace this Policy with any other policy affording directors and officers liability or management liability coverage, We shall provide an extension of insuring clause 1.1 (Directors and Officers Liability) only of this Policy for eighty four (84) months from the end of the Policy Period to any Insured who voluntarily retired from their position as a Director or Officer of the Company during the Policy Period, other than in connection with a Takeover or Merger but only with respect to a Wrongful Act committed by such Insured prior to their date of retirement.

Nothing in this extension increases the Limit of Indemnity.

2.12. Additional Non-Executive Directors Limit

In the event of the payment of Loss exhausting the Limit of Indemnity, the limits of liability of any and all policies operating in excess of this Policy and all other sources of indemnification for the Non-Executive Directors of the Company, then We will pay to, or on behalf of Non-Executive Directors only, any Loss resulting from any Claim subject to the applicable Additional Non-Executive Directors Limit amount stated in the Schedule.

The Additional Non-Executive Directors Limit shall only apply in respect of Claims subsequent to, and completely unrelated and unconnected to, the Claim or Claims or the underlying facts and matters that led to, the exhaustion of the Limit of Indemnity.

The Deductible applicable to cover provided under extension 2.12 is as stated in Deductible (a) of the Schedule.

2.13. Extradition Bail Bond Costs

The Policy shall extend to include the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an Insured's contingent obligation for bail or equivalent in any jurisdiction required by a court in respect of an Extradition Proceeding.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Extradition Bail Bond Costs sub-limit of indemnity specified in the Schedule.

2.14. Deprivation of Assets Expenses

We shall pay on behalf of the Insured Deprivation of Assets Expenses arising from a Deprivation of Assets Proceeding which first occurs and is notified to Us during the Policy Period in connection with a Claim covered under this Policy. We will only pay Deprivation of Assets Expenses after a personal allowance allowed by the court to meet such payments has been exhausted.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Deprivation of Assets Expenses sub-limit of indemnity specified in the Schedule. No deductible is applicable to this extension.

2.15. Prosecution Costs

This Policy shall extend to include the reasonable and necessary costs incurred by an Insured with Our prior written consent (such consent not to be unreasonably withheld) to bring legal proceedings to overturn:

- (a) an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an Insured or creating a charge over real property or personal assets of an Insured;
- (b) an interim or interlocutory order disqualifying an Insured from holding office or from managing a company; or

(c) a judicial order requiring an Insured to be confined to a specific domestic residence or to be held in custody pending trial; in connection with a Claim which first occurs and is notified to Us during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Prosecution Costs sub-limit of indemnity specified in the Schedule. No deductible is applicable to this extension.

2.16. Public Relations Expenses

This Policy shall extend to include the reasonable and necessary costs incurred by any executive director, executive officer or senior manager of the Company with the prior written consent of Us (such consent not to be unreasonably withheld) for the design and implementation of a publicity campaign to prevent or mitigate damage to the reputation of such persons arising from a Claim.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the public relations expenses sub-limit of indemnity specified in the Schedule. No deductible is applicable to this extension.

2.17. Crisis Costs

We shall pay on behalf of the Company Crisis Loss arising from any Crisis Event which first occurs and is notified to Us during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Crisis Costs sub-limit of indemnity specified in the Schedule. No deductible is applicable to this extension.

2.18. Employment Practices Liability Entity Coverage

We shall pay any Loss resulting from any Employment Practices Claim which is first made against the Company during the Policy Period and notified to Us in accordance with the terms of this Policy. The aggregate sub-limit of indemnity for all claims under this extension shall not exceed the amount of the Employment Practices Liability sub-limit of indemnity specified in the Schedule.

The Company will be liable for the Employment Practices Liability Deductible stated in the Schedule for any Claim made under this extension.

2.19. Third Party Discrimination or Sexual Harassment Entity Coverage

We will indemnify the Company for Loss arising from any Claim in connection with any actual or alleged Third Party Discrimination or Third Party Sexual Harassment which is first made against the Company during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Third Party Discrimination or Third Party Sexual Harassment sub-limit of indemnity specified in the Schedule.

The Company will be liable for the Employment Practices Liability Deductible stated in the Schedule for any Claim made under this extension.

2.20. Attendance Compensation

We shall pay the Company, attendance compensation resulting from the attendance of a maximum of two Insured persons on any one day:

- (a) at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry as a witness;
- (b) at an interview in the presence of a lawyer conducting the defence of any Claim for the purpose of composing a witness statement;
- (c) at a conference or consultation with a barrister for the purpose of preparation in relation to any Claim;
- (d) as an observer at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry, provided that We shall only be liable for the attendance of one observer for all Companies per day; and
- (e) where the attendance is in connection with a Claim.

For the purposes of this extension, attendance compensation means the amount referred to in the attendance compensation sub-limit of indemnity specified in the Schedule.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the attendance compensation sub-limit of indemnity specified in the Schedule. No deductible is applicable to this extension.

2.21. Tax Audit Costs

We shall pay on behalf of the Company necessary Tax Audit Costs reasonably incurred by the Company up to the completion of the audit or investigation provided that the Company first received a Tax Audit Notice during the Policy Period and notified Us of such notice during the Policy Period.

We shall only pay Tax Audit Costs under this extension if:

- (a) all taxation and other returns are submitted within the time limits prescribed by all relevant statutes and regulations or as required by or on behalf of the Australian Taxation Office or Taxation Authority within the extensions of time granted by such authority;
- (b) upon the Company or any other person acting on its behalf becoming aware of any error or deficiencies in any information, return of income or any other documentation furnished to the Australian Taxation Office or Taxation Authority, the Australian Tax Office or Taxation Authority is notified of such error or deficiencies without delay;
- (c) all taxes are paid by the due date or within any extension granted by the Australian Taxation Office or Taxation Authority;
- (d) a full and complete disclosure of all income including capital gains as required by any legislation is made by the Company or any other person acting on its behalf;
- (e) all correspondence, requests and inquiries from the Australian Taxation Office or Taxation Authority are dealt with without delay;
- (f) direct access to the Accountant or Registered Tax Agent is granted to Us and full cooperation by them is given to Us;
- (g) at Our request the Company instructs all Accountants or Registered Tax Agents, lawyers or other persons or organisations engaged by the Company to produce to Us, without delay, any documents or information or advice in the Insured's or their possession which We shall require in connection with any claim made under extension 2.21 (Tax Audit Costs).

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Tax Audit Costs sub-limit of indemnity specified in the Schedule.

The Company will be liable for the Tax Audit Costs Deductible stated in the Schedule for any claim made under this extension.

2.22. Employee Theft and Third Party Crime

We agree to provide indemnity to the Company against Direct Financial Loss where any such loss is sustained in consequence of any:

- (a) Employee Theft; or
- (b) Theft or Fraudulent Act committed by any Third Party;

provided always that:

- (i) such loss is first discovered by the Company during the Policy Period and is notified in writing to Us within ninety (90) days of the date of such discovery (but never beyond the expiry date of the Policy Period);
- (ii) such Employee Theft, Theft or Fraudulent Act has wholly occurred within Australia or New Zealand;
- (iii) there is no indemnity for any loss sustained in consequence of any act or omission occurring after the date of discovery, or the reasonable cause for suspicion, of dishonest or fraudulent conduct on the part of the Employee, Third Party or other persons concerned;
- (iv) no indemnity in respect of such loss shall be afforded hereunder to any person committing or condoning such Employee Theft, Theft or Fraudulent Act;
- (v) the Company shall take all reasonable steps to obtain reimbursement from such person committing or condoning such Employee Theft, Theft or Fraudulent Act;
- (vi) any monies which but for such Employee Theft, Theft or Fraudulent Act would be due from the Company to the person committing such act, or any monies held by the Company and belonging to such person, shall be deducted from any amount payable under this insurance;
- (vii) the sums payable hereunder shall only be for the balance of loss in excess of the amounts recoverable from the person(s) committing such Employee Theft, Theft or Fraudulent Act or their estates or legal personal representatives;
- (viii) nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such Employee Theft, Theft or Fraudulent Act.

The aggregate sub-limit of indemnity for all claims under extension 2.22 Employee Theft and Third Party Crime shall not exceed the amount of the Employee Theft and Third Party Crime sub-limit of indemnity specified in the Schedule.

2.23. Theft and Crime Investigation and Data Reproduction Costs

- (a) We will indemnify the Company for the reasonable costs incurred and paid by the Company to an independent investigator, accountant or other consultant to establish the existence and the amount of any Direct Financial Loss covered by extension 2.22 (Employee Theft and Third Party Crime) of this Policy.
- (b) We will indemnify the Company for the Company's reasonable costs to reproduce or duplicate damaged or destroyed electronic Data or computer programs directly arising from any Direct Financial Loss covered under extension 2.22 (Employee Theft and Third Party Crime) of this Policy.

If such electronic Data or computer programs cannot be duplicated from other electronic Data or computer programs then We will indemnify the Company for reasonable costs incurred to purchase the replacement computer program software, or if it cannot be purchased, for the time taken for computer programmers, technical experts or consultants to restore such electronic Data or computer programs to substantially the same level of operational capability existing immediately before the covered loss.

Reasonable costs payable under extension 2.23 (Theft and Crime Investigation Costs) shall not include wages, salaries, time costs and expenses or other remuneration of any Insured, or the time or expenses incurred by the Company's clients.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Crime Costs and Data Reproduction Costs sub-limit of indemnity specified in the Schedule. This sub-limit of indemnity is in addition to the sub-limit of indemnity provided under extension 2.22 (Employee Theft and Third Party Crime).

In the event that a Direct Financial Loss is paid under extension 2.22 (Employee Theft and Third Party Crime), no deductible is applicable to this extension.

2.24. Identity Fraud Expenses

In the event that a party other than an Insured fraudulently represents themselves as a representative of the Company and enters into an agreement on behalf of the Company with a third party, and such third party seeks to enforce the agreement, We will indemnify the Company for reasonable costs and expenses incurred by the Company with our prior written consent (not to be unreasonably withheld) to establish that a fraudulent misrepresentation has occurred.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Identity Fraud Expenses sub-limit of indemnity specified in the Schedule.

2.25. Internet Liability

We will indemnify the Company for Loss arising out of all Internet Claims first made against the Company during the Policy Period.

The aggregate sub-limit of indemnity for all Claims under this extension shall not exceed the amount of the Internet Liability sub-limit of indemnity specified in the Schedule.

2.26. Run off cover for Takeover and Merger

In the event of a Takeover or Merger any coverage hereunder shall apply only to Wrongful Acts committed prior to the date of such Takeover or Merger.

2.27. Run off cover for Subsidiaries

In the event of:

- (a) the sale of a Subsidiary or the merger or acquisition of the Subsidiary with another entity such that the Subsidiary is not the surviving entity; or
- (b) the acquisition by any entity or person of 50% (fifty percent) or more of the voting stock of a Subsidiary; or
- (c) a change in the majority or the Board of directors of a Subsidiary;

any coverage hereunder shall apply only to Wrongful Acts committed prior to the date of such event referred to in (a) – (c).

3. Definitions

The following definitions of each word, words or phrase appearing in the title are applicable to all Policy sections. All words appearing in the title also include the plural or singular of those words.

3.1. Accountant or Registered Tax Agent

Means a person who is not an Insured and is recognised by either the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by the Company for the purpose of preparing, or supervising the preparation of, or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office or Taxation Authority, in respect of any liability to pay tax by the Company.

3.2. Benefit

Means any amount payable to a beneficiary of a Fund by the Trustee under the governing rules of the Fund.

3.3. Cheque Forgery

Means:

- (a) the Forgery or fraudulent alteration of any cheque or similar written promise by the Company to pay money where such money is drawn upon the Company's account at any bank at which the Company maintains a current or savings account;
- (b) the fraudulent alteration of, on or in any cheque or draft:
 - (i) drawn upon by any bank; or
 - (ii) drawn upon by any corporation upon itself;
- (c) the fraudulent alteration of, on or in any cheque or written order or direction to pay money where such money is drawn by any public body upon itself, or any warrant drawn by any public body which the Company shall receive at any of its Premises in payment or purported payment for:
 - (i) tangible property sold and delivered; or
 - (ii) services rendered.

3.4. Claim

Means:

- (a) for the purpose of the cover for any Insured in insuring clauses 1.1 (Directors and Officers Liability) and 1.2 (Company Reimbursement), and extensions 2.1 (Advancement of Costs and Emergency Defence Costs), 2.2 (Pollution Costs), 2.3(a) (Fines and Penalties), 2.5 (Continuous Cover), 2.7(a) – (b) (Superannuation Trustees Liability Cover), 2.9 (Outside Directorships), 2.10 (Extended Reporting Period), 2.11 (Retired Directors and Officers), 2.12 (Additional Non-Executive Director's Limit), 2.14 (Deprivation of Assets), 2.15 (Prosecution Costs), 2.16 (Public Relations Expenses), and 2.20 (Attendance Compensation):
 - (i) a written demand by a third party against an Insured for compensation, damages or for non-monetary relief;
 - (ii) a civil proceeding brought by a third party against an Insured for recovery of compensation, damages or for non-monetary relief;
 - (iii) any criminal proceeding against, or any proceeding for extradition of an Insured;
 - (iv) any formal administrative or regulatory proceeding against an Insured, commenced by the filing of notice of charges, formal investigative order or similar document, including arbitration, mediation, conciliation or alternative dispute resolution proceeding;
 - (v) any Employment Practices Claim made against an Insured; or
 - (vi) any Third Party Discrimination or Third Party Sexual Harassment Claim against an Insured.

- (b) for the purpose of the cover for the Company in insuring clause 1.3 (Company Liability) and extensions 2.1 (Advancement of Costs and Emergency Defence Costs), 2.2 (Pollution Costs), 2.3(b) (Fines and Penalties), 2.5 (Continuous Cover), 2.7(c) (Superannuation Trustees Liability Cover), 2.10 (Extended Reporting Period), 2.18 (Employment Practices Liability Entity Coverage (EPL)), 2.19 (Third Party Discrimination or Sexual Harassment), 2.20 (Attendance Compensation), 2.24 (Identity Fraud) and 2.25 (Internet Liability) a written demand to, or civil proceedings by a third party against the Company for compensation or damages.
- (c) for the purpose of extensions 2.4 (Workplace Health and Safety Costs) and 2.6 (General Inquiry Costs) and the terms of the Policy applicable to such cover only, an Inquiry.

3.5. Company

Means the entity stated in the Schedule as the Company, and any Subsidiary.

3.6. Corporate Card Fraud

Means the fraudulent use of any corporate credit, debit or charge card issued to the Company or any Employee for business purposes where such card is a Forgery or is the subject of fraudulent alteration provided that the Company or Employee has complied fully with the provisions, conditions and other terms under which the card was issued and provided the Company is legally liable for such Direct Financial Loss.

3.7. Costs

Means the reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses incurred in investigating and defending a Claim and of any appeal, and the costs of legal representation at any Inquiry and the legal costs associated with the preparation for said Inquiry.

This does not include any Insured's or the Company's own internal or overhead costs and expenses.

3.8. Crisis Event

Means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the Company, the event has the potential to cause an imminent decrease of greater than 30% (thirty percent) of the total consolidated annual revenues of the Company if left unmanaged:

- (a) the sudden, unexpected death or disability of any executive;
- (b) loss of a major customer, contract or credit facility;
- (c) Employee workplace violence;
- (d) the first apparent unauthorised intrusion into any Company's computer facilities;
- (e) a recall or boycott of any product;
- (f) a man-made disaster; or
- (g) any criminal or fraud investigation.

Crisis Event does not include an event that affects the Company's industry in general rather than the Company specifically.

3.9. Crisis Loss

Means the reasonable and necessary fees, costs and expenses paid by the Company for external crisis management services provided in response to a Crisis Event within the first thirty (30) days after the event (but never beyond the expiry of the Policy Period).

3.10. Data

Means information contained in records or accounts belonging to the Company.

3.11. Deductible

Means the amount referred to in the Schedule applicable to relevant cover or sub-limited cover under the Policy.

3.12. Deprivation of Assets Expenses

Means payment directly to providers of the following services:

- (a) housing;
- (b) utilities;
- (c) personal insurances; and
- (d) schooling;

in the event of Deprivation of Assets Proceeding.

3.13. Deprivation of Assets Proceeding

Means an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an Insured or creating a charge over real property or personal assets of an Insured.

3.14. Direct Financial Loss

Means loss of Money, Securities or Property belonging to the Company or loss of Money, Securities or Property in the care, custody or control of the Company, for which the Company is legally liable.

3.15. Director or Officer

Means:

- (a) in respect of all Claims other than Employment Practice Claims, any natural person who was, now is, or may hereafter become a director or officer of the Company or any other person who may at any material time be deemed to be such a director or officer within the meaning of any applicable law or regulation; and
- (b) in respect of Employment Practice Claims, any natural person who was, now is, or may hereafter become a director or officer or employee of the Company and any other person who may at any material time be deemed to be such a director or officer or employee within the meaning of any applicable law or regulation; and
- (c) in respect of the cover under extension 2.9 (Outside Directorships), any director, officer or employee of the Company who was, now is or becomes at the written request of the Company a director, officer or equivalent position in any Outside Entity, but shall not include any natural person who was, now is, or may hereafter become a trustee or administrator of any health and welfare plan or other Employee benefit programme, social benefits system or trust programme established or maintained for the benefit of Employees with the exception of any Fund; and
- (d) the lawful spouse or domestic partner of any Director or Officer as defined in clauses 3.15 (a) – (c) but only to the extent that such spouse or domestic partner is a party to any Claim solely in his or her capacity as spouse or domestic partner of any Director or Officer, and only for the purposes of any Claim seeking damages which are recoverable from marital community property, property jointly held by the Director or Officer and their spouse or domestic partner, or property transferred from the Director or Officer to the spouse or domestic partner for solely lawful purposes, and only to the extent that such Director or Officer is covered by this Policy for such Claim.

3.16. Employee

Means any person employed by the Company under a contract of service during or prior to the commencement of the Policy Period. The definition of Employee excludes any consultant, contractors, agents or labour hire personnel supplied to the Company.

3.17. Employment Practices Claim

Means an employment related Claim for any actual or alleged, unfair or wrongful dismissal, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation, humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference), which relate solely to the Company's past, present or prospective Employees.

3.18. Employee Theft

Means any dishonest, fraudulent, criminal or malicious act of any Employee of the Company.

3.19. Extradition Bail Bond Costs

Means the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee an Insured's contingent obligation for bail required by a court in respect of an Extradition Proceeding.

3.20. Extradition Proceeding

Means a written request for extradition of an Insured, a warrant for the arrest of an Insured or other proceedings commenced by a writ, complaint, summons or other originating process against an Insured under the provisions of the Extradition Act 1988 (Cth) and/or any associated regulations; and

- (a) any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); and
- (b) the equivalent of the above in any other jurisdiction.

A Wrongful Act of an Insured is not required for cover for an Extradition Proceeding.

3.21. Forgery

Means the signing or endorsing of the name of a genuine person or a copy of the said person's signature without authority and with intent to deceive. A signature may be hand-written or mechanically or electronically produced or reproduced. It does not include the signing in whole or in part of one's own name, with or without authority, in any capacity, for any purpose.

3.22. Fraudulent Act

Means:

- (a) Cheque Forgery;
- (b) Corporate Card Fraud;
- (c) Imitation Fraud; or
- (d) Funds Transfer Fraud.

3.23. Fund

Means any single employer superannuation fund or similar superannuation fund established for the benefit of any Employee. It does not include any industry, master or self-managed superannuation funds.

3.24. Funds Transfer Fraud

Means fraudulent telephonic, facsimile, cable, teletype, electronic, telegraphic or written instructions issued to a financial institution directing the financial institution to pay, deliver, transfer Money or negotiable instruments from any account maintained by the Company at such financial institution without the knowledge or consent of the Company.

3.25. Imitation Fraud

Means:

- (a) the Forgery or fraudulent alteration of any Money or negotiable instruments or instructions; or
- (b) the counterfeiting of any Money or negotiable instruments, upon which the Company has acted or relied.

3.26. Inquiry

Means any official investigation, inquiry or examination into the affairs of the Company, or the conduct of an Insured as a Director or Officer or Employee of the Company, which the Insured is legally compelled to attend or provide documents by official notice or process.

3.27. Insured

Means

- (a) any Director, Officer or Employee whilst acting in their capacity as such;

- (b) the estate, heirs, legal representatives or assigns of any Director, Officer or Employee in the event of the death, incompetence or bankruptcy of that Director, Officer or Employee.

Insured shall not include any administrator, auditor, liquidator, mortgagee in possession, receiver or their respective employees.

3.28. Internet Activities

Means:

- (a) the display or other use of Matter on an Internet Site; or
- (b) transmission of Matter via an Internet Site.

3.29. Internet Claim

Means a written demand, or civil proceedings by a third party against the Company for compensation or damages arising out of:

- (a) libel, slander or other written publication of defamatory or disparaging material;
- (b) invasion of or interference with any right of privacy committed or allegedly committed by the Company;

solely arising out of the Company's Internet Activities.

3.30. Internet Site

Means that or those internet site or sites specified in the Schedule but shall not include any Third Party Internet Sites accessed by or through links from the Company's Internet Site.

3.31. Limit of Indemnity

Means the amount stated in the Schedule next to the Limit of Indemnity.

3.32. Loss

Means any amount which an Insured or the Company is legally obligated to pay on account of any covered Claim including, but not limited to:

- (a) damages, judgments and costs awarded by a court or tribunal empowered to do so;
- (b) settlements entered into with Our prior written consent (such consent not to be unreasonably withheld);
- (c) Costs;
- (d) Extradition Bail Bond Costs;
- (e) pecuniary penalties; and
- (f) attendance compensation.

Loss shall not include taxes, fines, penalties (other than extension 2.3 (Fines and Penalties)), punitive, exemplary, aggravated or multiplied damages, or any amount in respect of any Claim or conduct deemed uninsurable by law, except for exemplary or aggravated damages arising from any Claim against any Insured for libel, slander or defamation. In respect of any Employment Practices Claim, Loss shall also not include:

- (i) any obligation pursuant to any law or any regulation in any jurisdiction in respect of workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or regulation whatsoever;
- (ii) any salary or wages earned while in the employment of the Company;
- (iii) any employment-related benefits to which the claimant would have been entitled as an employee had the Company provided the claimant with a continuance, reinstatement or commencement of employment;
- (iv) contractual damages based upon the terms of a contract of employment;
- (v) any liability or costs incurred to modify any building or property in order to make such a building or property more accessible or accommodating to any disabled persons; or
- (vi) any amount payable by the Company in respect of an unfair contract of employment.

3.33. Matter

Means printed, verbal, numerical, audio or visual expression, or any other expression whatsoever, regardless of the medium through which such expression is made.

3.34. Money

Means currency, electronically held funds, bank notes, coins, bullion, cheques, travellers cheques, postal orders and money orders.

3.35. Nominated Subsidiary

Means any newly created or acquired subsidiary that is nominated by the Company and agreed to in writing by Us.

3.36. Non-Executive Director

Means any Director who, at the time of the alleged Wrongful Act or Inquiry, is not an Employee of the Company, or a paid consultant of the Company.

3.37. Outside Entity

Means any:

- (a) not for profit organisation; or
- (b) entity listed in the Schedule of Outside Directorships endorsement (if any) attaching to and forming part of this Policy.

3.38. Policy

Means this policy document, Schedule, attached endorsements and any endorsements agreed by Us in writing.

3.39. Policy Period

Means the policy period specified in the Schedule.

3.40. Pollutant

Means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to dust, germs, mould, mildew, fungus, spores, fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear, asbestos, silica or radioactive material of any sort, chemicals, or waste materials (including but not limited to any materials to be recycled, reconditioned or reclaimed).

3.41. Premises

Means the interior portion of any building owned or occupied by the Company and in which it conducts its business.

3.42. Premium

Means the premium specified in the Schedule.

3.43. Property

Means tangible personal property other than Money or Securities.

3.44. Retroactive Date

Means the date specified in the Schedule as such.

3.45. Schedule

Means the Schedule to this Policy.

3.46. Securities

Means negotiable and non-negotiable instruments or contracts representing money or other property, but excluding Money and Property.

3.47. Subsidiary

Means:

- (a) any branch, division or other internal structure of the Company except any superannuation fund or scheme established for the Company's own directors, officers or employees;
- (b) any company in respect of which the Company (either directly or indirectly through one or more of its Subsidiaries), prior to or at the commencement of the Policy Period:
 - (i) controls the composition of the board of directors; or
 - (ii) controls more than half of the voting stock; or
 - (iii) holds more than half of the issued share capital;
- (c) any Australian or New Zealand domiciled entity which is acquired or created on or subsequent to the commencement of the Policy Period but which otherwise falls within paragraph 3.47 a) or 3.47 b) and of which the total assets do not exceed 25% (twenty-five percent) of the total consolidated assets of the Company as shown in their last consolidated financial statement or annual report, provided that this Policy shall only apply in respect of a Wrongful Act committed or alleged to have been committed by an Insured subsequent to the date of such acquisition or creation; or
- (d) any entity other than those referred to in paragraph 3.47 a) – c) and which is a Nominated Subsidiary.

3.48. Takeover or Merger

Means

- (a) any sale of the Company or its merger with or acquisition by another entity such that the Company is not the surviving entity; or
- (b) the acquisition by any entity or person of 50% (fifty percent) or more of the voting stock of the Company; or
- (c) a change in the majority or the board of directors; or
- (d) an administrator, receiver, liquidator being appointed voluntarily or otherwise.

3.49. Tax Audit Costs

Means any fees, charges or disbursements of an Accountant or Registered Tax Agent or any other consultant who is not an Insured Person engaged by or replacing the Accountant or Registered Tax Agent, for work undertaken in connection with the audit or investigation.

3.50. Tax Audit Notice

Means any notification from the Australian Taxation Office, office of state revenue, or any other Australian Commonwealth, state or territory department, body, agency or authority, relating only to the investigation of the Company's liability to pay:

- (a) income tax;
- (b) payroll tax;
- (c) fringe benefits tax;
- (d) capital gains tax;
- (e) A New Tax System (Goods and Services Tax);
- (f) superannuation payments tax;
- (g) termination payments tax;
- (h) land tax;
- (i) stamp duty; or
- (j) sales tax (including the amount of any such tax).

Tax Audit Notice includes notification from the Australian Taxation Office of an intention to undertake a risk review relating to the Company's liability to pay (a) – (j) above.

3.51. Taxation Authority

Means the Australian Tax Office or any office of state revenue, or any other Australian Commonwealth, state or territory department, body, agency or authority with the legal right to levy or collect income tax, payroll tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services Tax), superannuation payments tax, termination payments tax, land tax, stamp duty or sales tax. Taxation Authority shall not include any customs or excise body, agency or authority.

3.52. Theft

Means the unlawful taking of the Company's Money, Securities or Property occurring:

- (a) within the Premises; or
- (b) within the interior of any banking premises or similar recognised place of safe deposit; or
- (c) while in transit and in the care, custody and control of an Employee or Director or Officer of the Company following the actual or threatened use of force or violence; or
- (d) while in the care, custody and control of any security company or armoured motor vehicle company, duly authorised by the Company to retain such care, custody and control provided that We shall only be liable for the amount that is in excess of the amount of any other valid and collectible insurance or indemnity contractual or otherwise, available to the security company or armoured motor vehicle company.

3.53. Third Party

Means any natural person who is a customer, vendor, service provider or business invitee of the Company. Third Party does not include:

- (a) any Employee or Director or Officer;
- (b) any person who owns or controls any of the Company's issued share capital;
- (c) any person acting in collusion with any Employee; or
- (d) any natural person providing services under any contract for services, written or implied, with the Company.

3.54. Third Party Discrimination

Means discrimination against a Third Party based upon such Third Party's race, colour, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference or protected military status or other status which is protected pursuant to any Anti-Discrimination law.

3.55. Third Party Internet Site

Means web sites that are not owned, controlled, leased, administered, maintained or provided by the Company.

3.56. Third Party Sexual Harassment

Means sexual harassment, including unwelcome sexual advances, requests for sexual favours or conduct of a sexual nature against a Third Party.

3.57. Trustee

Means an Insured or the Company if validly appointed to act, and while acting in that capacity, as a trustee of a Fund.

3.58. Trustee Breach

Means any Wrongful Act committed or allegedly committed by an Insured in their capacity as a Trustee or as a Director or Officer of the Company acting as a corporate Fund Trustee, or by the Company acting in its capacity as a corporate Fund Trustee.

3.59. We, Us, Our

Means Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

3.60. Wrongful Act

Means:

- (a) for the purpose of insuring clauses 1.1 (Directors and Officers Liability) and 1.2 (Company Reimbursement), any actual or alleged wrongful act or omission on the part of an Insured committed solely in such person's actual or deemed capacity as an Insured.
- (b) for the purpose of insuring clause 1.3 (Company Liability), any actual or alleged wrongful act or omission on the part of the Company.
- (c) For the purpose of extension 2.7 (Superannuation Trustees Liability cover), any actual or alleged wrongful act or omission on the part of an Insured or Company, individually or otherwise, in the management of a Fund.
- (d) For the purpose of extension 2.18 (Employment Practices Liability Entity Coverage), any actual or alleged wrongful act or omission on the part of the Company giving rise to an Employment Practices Claim.

Related or continuous or repeated or causally connected Wrongful Acts shall constitute a single Wrongful Act.

4. Exclusions Applicable To All Policy Sections

4.1. Prior or Pending Claims and Circumstances

We are not liable to indemnify the Insured or the Company, in respect of any:

- (a) Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Insured or the Company before the Policy Period,
- (b) Claim arising from the same or essentially the same cause as any Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Insured or the Company before the Policy Period,
- (c) fact, circumstance, act, omission or claim which, prior to the Policy Period, the Insured or the Company is aware may result in or could reasonably be expected to result in a Claim or Inquiry,
- (d) Claim, circumstance or any Inquiry of which notice has been given, or should have been given, under any policy existing or expired before or on the inception date of this Policy or which was included on the proposal form; or
- (e) Claims, Loss or Inquiry, arising from an event which occurred before this Policy's Retroactive Date (if any), where such a date is specified in the Policy Schedule.

4.2. Fines and Penalties

We are not liable to indemnify the Insured or the Company for multiplied, punitive, aggravated, or exemplary damages, fines or any criminal or civil penalties imposed by law, except to the extent covered by extension 2.3 (Fines and Penalties).

4.3. Pollution

We are not liable to indemnify the Insured or the Company in connection with the actual, alleged, or threatened discharge, release or escape of Pollutants, or the containment, clean up, removal, treatment, or monitoring of such Pollutants, except to the extent covered by extension 2.2 (Pollution Costs).

4.4. Asbestos

We are not liable to indemnify the Insured or the Company in connection with, or in any way involving, asbestos or asbestosis.

4.5. War and Terrorism

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss arising from:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot;
- (b) civil commotion assuming the proportions of or amounting to an uprising;
- (c) military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- (d) any act or acts of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation; or
- (e) any action taken in controlling, preventing, suppressing or in any way relating to 4.5 a) - 4.5 d) above.

The burden of proving that a claim does not fall within this exclusion shall be upon the Insured or the Company.

4.6. Radiation

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss in connection with any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from waste from the combustion of nuclear fuel;

or

- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.7. Public Securities Offering

We are not liable to indemnify the Insured or Company for any Claim, Loss or loss directly or indirectly caused by, arising out of or in any way connected with the actual or alleged public sale, private sale, offer to sell, offer to purchase or offer to distribute securities representing a debt or equity interest in the Company or any Subsidiary.

4.8. Major Shareholders

We are not liable to indemnify the Insured or Company for any Claim, Loss or loss directly or indirectly caused by, arising out of or in any way connected with any person or entity holding beneficially or otherwise or in control of more than 20% (twenty percent) of the issued share capital of the Company at the time of the Wrongful Act, whether such Claim is made in the name of the Company or not.

4.9. Insolvency or Administration

We are not liable to indemnify the Insured or Company for any Claim, Loss or loss arising directly or indirectly from or in connection with or as a consequence of one or more of the following:

- (a) an order being made for the winding up of the Company;
- (b) the appointment to the Company of a liquidator or a receiver or an administrator or an administrative receiver or a trustee in bankruptcy or, in the case of a voluntary arrangement, a nominee or a supervisor;
- (c) a proposal being made by or to the Company, or by or to its creditors, of a composition of debts or scheme of arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise; or
- (d) in any way whatsoever relating to the solvency or insolvency of the Company.

4.10. Bodily Injury or Property Damage

We are not liable to indemnify the Insured or Company for any Claim, Loss or loss for any actual or alleged bodily injury, sickness, disease or death of any person or any actual or alleged damage to or destruction of any tangible property, including loss of use thereof, except:

- (a) where covered by extension 2.4 (Workplace Health and Safety Costs) of this Policy; or
- (b) for any Claim for emotional distress with respect to an Employment Practices Claim or any Claim for libel, slander or defamation.

4.11. Dishonesty, Fraud or Wilful Breach of Duty

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss in connection with, or in any way:

- (a) arising directly or indirectly from or in connection with any dishonest, fraudulent, criminal or malicious act of any Insured or the Company; or
- (b) arising out of conduct which involves wilful breach of duty in relation to the Company or any breach of Section 182 (Use of information – civil obligations) or Section 183 (Use of position – civil obligations) of the Corporations Act (Cth).

For the purpose of determining the applicability of this Exclusion, the knowledge and conduct of any Insured or the Company shall not be imputed to any other Insured. This Exclusion only applies in the event that the foregoing conduct is established by final adjudication by a court or tribunal or by written admission by such Insured.

4.12. Personal Profit

We are not liable to indemnify the Insured or the Company for any Claim or Loss in connection with, or in any way arising directly or indirectly from any Insured or the Company gaining in fact any profit or advantage, or receiving any remuneration, to which they were or it was not legally entitled.

This Exclusion only applies in the event that the foregoing conduct is established by final adjudication by a court or tribunal or by written admission by such Insured.

4.13. Professional Services

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss in connection with, or in any way arising directly or indirectly from any actual or alleged professional services provided by or on behalf of the Company or by any Insured. This Exclusion shall not apply to extension 2.16 (Public Relations Expenses) or extension 2.17 (Crisis Costs).

4.14. Company versus Insured

We are not liable to indemnify the Insured or the Company for any Claim brought or maintained by or on behalf of the Company against any Insured. This Exclusion does not apply to:

- (a) Costs; or
- (b) any Claim that has been brought or maintained either directly or derivatively on behalf of the Company (without the solicitation, participation or assistance of any Insured or the Company) against an Insured; or
- (c) any Claim by a liquidator, administrative receiver or receiver; or
- (d) any Claim arising from a shareholder derivative action.

4.15. Warranties and Guarantees

We are not liable to indemnify the Insured or the Company for any Claim arising from or attributable to any actual or alleged liability of the Company under any contract, guarantee, warranty or agreement or assumed liability to the extent that the contract or other assumed liability increases the compensation or damages payable beyond the amount payable in tort or under any applicable statute.

4.16. Superannuation

We are not liable to indemnify the Insured or the Company for any Claim, Loss or loss arising directly or indirectly from or in connection with any actual or alleged violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund.

4.17. Illegal Copies of Programs

We are not liable to indemnify the Insured or the Company, in respect of any data reproduction fees, costs or expenses claimed under clause b) of extension 2.23 (Theft and Crime Investigation and Data Reproduction Costs) where the reconstitution of data is required as a result of the Insured knowingly using illegal copies of programs.

4.18. Sanction

We are not liable to indemnify the Insured or the Company, in respect of any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Japan, United Kingdom or United States of America.

5. Exclusions Applicable To Insuring Clause 1.3 (Company Liability)

We are not liable to indemnify the Company under insuring clause 1.3 (Company Liability) in respect of any Claim, Loss or loss arising directly or indirectly from or in connection with:

5.1. Anticompetitive Behaviour

or attributable to violation of any law, rule or regulation relating to competition, price fixing, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

5.2. Intellectual Property Rights

any misappropriation, plagiarism or infringement of any trade mark, trade secret, patent, copyright or any other intellectual property rights.

5.3. Financial Commitments

any trading debt or financial commitment of the Company in conducting its business.

5.4. Employment Practices Claims

conduct leading to any Employment Practices Claim, other than as covered under extension 2.18 (Employment Practices Liability Entity Coverage).

6. Exclusions Applicable To Extension 2.7 (Superannuation Trustees Liability Cover)

We are not liable to indemnify the Insured or the Company under extension 2.7 (Superannuation Trustees Liability Cover) for any Claim, Loss or loss arising directly or indirectly from or in connection with:

6.1. Fraudulent or Criminal Acts

any actual or alleged dishonest, fraudulent or malicious act of any Trustee.

6.2. Illegal Profit

or in any way involving any Trustee or the Fund gaining any profit or advantage or receiving any remuneration to which they were not legally entitled.

6.3. Investment Performance

the downward valuation or negative financial performance of any investment entered into by the Company or any Insured, where such downward valuation or negative financial performance results from any investment market fluctuation which is outside of the control or influence of the Fund.

6.4. Benefits and Contributions

the failure to collect, pay or maintain any Benefit or contributions to any Fund as required by any law or Fund trust deed.

6.5. Denial of Benefits

the grant or denial of any superannuation Benefit, or Benefit for death, temporary disability (total or partial) or permanent disability (total or partial) to a beneficiary of a Fund, other than defence Costs of the Trustee.

7. Exclusions Applicable To Extension 2.21 (Tax Audit Costs)

We are not liable to indemnify the Company under extension 2.21 (Tax Audit Costs) for any Claim, Loss or loss in respect of Tax Audit Costs in connection with:

7.1. ATO Requests

any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the furnishing of information by the Company.

7.2. Non-Audit Inquiries

inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit.

7.3. Geographical Limitation

any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories, or where the services giving rise to the audit are performed by persons or any corporate entity ordinarily resident outside Australia.

7.4. Customs

matters arising under customs or excise legislation, including but not limited to the Customs Act 1901, Commerce (Trade Descriptions) Act 1905, Copyright Act 1968, Trade Marks Act 1995, Customs Regulations 1926, Customs (Prohibited Exports) Regulations 1958, Customs (Prohibited Imports) Regulations 1956 or Commerce (Imports) Regulations 1940.

7.5. Prior or Pending Investigations

any audit or investigation for which notice was received, or information which could lead the Company or any person acting on its behalf to believe that an audit or investigation was likely to be carried out, was received by the Company or any person acting on its behalf, prior to the Policy Period. Receipt of such communication will have occurred where the Australian Taxation Office makes communication with the Company or any other person acting on its behalf.

7.6. Fraudulent Acts

any fraudulent or criminal act, error, omission or fraudulent misrepresentation committed by or on behalf of the Company.

7.7. Penalties

the imposition of or seeking to impose any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution.

7.8. Non-Professional Returns

an audit or investigation of a return of income that has not been prepared or reviewed by the Accountant or Registered Tax Agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return.

7.9. Post-Audit Costs

Tax Audit Costs incurred after the audit or investigation has been completed.

8. Exclusions Applicable To Extension 2.22 (Employee Theft and Third Party Crime)

8.1. Agent Acts

We are not liable to indemnify the Company for Direct Financial Loss or loss arising directly or indirectly from or in connection with any act, error or omission of any independent contractor (other than an Employee), broker, merchant, external solicitor or external accountant, or other similar agent or representative. This exclusion shall not apply to any organisation to which the Company has outsourced any normal administrative function under a written contract of engagement with such organisation.

8.2. Confidential Information

We are not liable to indemnify the Company under extension 2.22 (Employee Theft and Third Party Crime), for Direct Financial Loss or loss arising directly or indirectly from or in connection with the loss or misuse of confidential information, material or data.

8.3. Dishonest Board or Directors

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss arising from or in connection with theft, forgery or any fraudulent, dishonest or criminal act committed by any member of the board, or director of the Company, whether acting alone or in collusion with others.

8.4. Loss of Income

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss arising from or in connection with loss of income or profit.

8.5. Consequential Damage

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss arising from or in respect of indirect or consequential loss or damage of any kind, apart from the Company's costs to establish the existence and the amount of any loss provided such loss is covered by extension 2.22 (Employee Theft and Third Party Crime).

8.6. Surrendered Money, Securities, Property

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), where such loss results from an Insured knowingly having given or surrendered Money or Securities or Property in any exchange or purchase with a third party not in collusion with an Insured.

8.7. Money in Third Party's Custody

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss arising directly or indirectly from or in connection with loss of or damage to Money or Securities or Property whilst in the custody of any bank or authorised deposit taking institution or any person who is duly authorised by the Company to have custody of Money, Securities or Property.

This exclusion shall not apply to Direct Financial Loss resulting from any Theft or Fraudulent Act:

- (a) while such Money or Securities or Property are in transit and in the care, custody and control of an Employee or Director or Officer of the Company following the actual or threatened use of force or violence; or
- (b) while such Money or Securities or Property are in the care, custody and control of any security company or armoured motor vehicle company, duly authorised by the Company to retain such care, custody and control and provided that We shall only be liable for the amount that is in excess of the amount of any other valid and collectible insurance or indemnity, contractual or otherwise, available to the security company or armoured motor vehicle company.

8.8. Profit, Loss or Inventory Computation

We are not liable to indemnify the Company in respect of any Direct Financial Loss which can only be proved solely by:

- (a) a profit and loss computation or comparison; or
- (b) a comparison of inventory records with an actual physical count.

8.9. Trading

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss arising directly or indirectly from or in connection with:

- (a) any trading of Money or Securities whether or not in the name of the Company and whether or not in a genuine or fictitious account;
- (b) any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like unless the loss is a result of a fraudulent act which results in the Insured making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration.

8.10. Data Loss

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), for loss comprising in whole or part fees, costs or expenses incurred or paid:

- (a) as a result of the reconstitution of Data if the Company knowingly uses illegal copies of programs;
- (b) to render the Data usable by replacement processing equipment;
- (c) to design, update or improve software programs or to perfect their operation or performance;
- (d) as a result of an alteration in Data held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the computer system.

8.11. Fire or Premises Damage

We are not liable to indemnify the Company in respect of any fire or any damage or destruction to any premises or building.

8.12. Geographical Limits

We are not liable to indemnify the Company in respect of any Direct Financial Loss under extension 2.22 (Employee Theft and Third Party Crime), arising out of or in any way connected with any dishonest, fraudulent, criminal or malicious act of any Employee committed, in whole or part, outside of Australia or New Zealand.

9. Claims and Notice Conditions

Unless expressly stated otherwise the following conditions are applicable to all Policy sections.

9.1. Notification

- (a) The Insured and/or Company must give written notice to Us of all Claims falling under insuring clause 1.1 (Directors and Officers Liability), insuring clause 1.2 (Company Reimbursement) or insuring clause 1.3 (Company Liability) as soon as practicable after the Claim is made and prior to the expiration or termination of the Policy.
- (b) The Company shall give written notice to Us of all discovery of conduct or losses falling under extension 2.22 (Employee Theft and Third Party Crime) of this Policy as soon as reasonably practicable following such discovery and prior to the expiration or termination of the Policy.

Notice of any Claim will be provided in writing to:

National Head of Claims

australiaclaims@berkleyinaus.com.au

Berkley Insurance Australia

PO Box Q296

QVB NSW 1230

9.2. Co-operation, Assistance and Disclosure of Insurance

The Insured and/or Company must co-operate and give Us and Our representatives all information and assistance that is reasonably required to enable Us to investigate and defend any Claim and to enable Us to determine Our liability under this Policy.

The Insured and/or Company shall not disclose to anyone the existence of this Policy without Our written consent unless as a consequence of the requirements of law.

9.3. Mitigation

The Insured and/or Company must at their own cost use all due diligence and do, and concur in doing, all things reasonably practicable to avoid or diminish any legal liability, Loss or Costs, in respect of which We are liable to indemnify the Insured under this Policy.

9.4. Conduct of Proceedings

We shall be entitled at any time to conduct, in the name of the Insured and/or Company the defence or settlement of any Claim or to prosecute in the name of the Insured for their own benefit any claim for payment, indemnity or damages or otherwise against any third party. We also have the right to appoint legal representation for the Insured in respect of any Inquiry if We elect to do so.

In any event no action shall be taken by the Insured and/or Company which might prejudice Our interests.

9.5. Settlement

The Insured and the Company agree not to settle any Claim, incur any Costs, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without Our written consent, which shall not be unreasonably withheld.

We shall not be liable for any amount, settlement, Costs, admission, offer or payment, or assumed obligation to which it has not consented.

9.6. Right to Contest

We may not require any Insured and/or the Company to contest any Claim unless Senior Counsel advises that the Claim should be contested. In formulating the advice, Senior Counsel must take into consideration the damages and costs which are likely to be recovered by the claimant, the likely Costs, and the Insured's prospects of successfully defending the Claim. Senior Counsel shall be appointed by agreement of the Insured and Us, and in the absence of agreement, by the President of the Bar Association in the relevant State or Territory or Country. The cost of Senior Counsel's advice shall be regarded as part of the Costs.

In the event that We recommend, in writing, settlement in respect of any Claim and any Insured and/or the Company does not agree, then the Insured and/or the Company may elect to contest the Claim. However, Our liability for the Claim and Costs is then limited to the amount We recommended in settlement plus Costs incurred with Our consent up to the date that We recommended settlement.

9.7. Claims Aggregation

- (a) Where under Section 1 (insuring clauses) or Section 2 (extensions), two or more Claims arise from the same Wrongful Act, act, error or omission, or from an original cause or event or from related, continuous, repeated or causally connected or a series of interrelated Wrongful Acts, acts, errors or omissions, then all such Claims shall constitute one Claim and;
 - (i) only one Deductible shall be payable by the Insured or Company; and
 - (ii) the maximum amount payable by Us shall not exceed the Limit of Indemnity.
- (b) Where under extension 2.22 (Employee Theft and Third Party Crime) two or more covered losses arise from the same act or conduct, or from more than one act, or series of conduct, which arise from an original cause or event or from related continuous, repeated or causally connected events, or a series of interrelated, acts or conduct, then all such losses shall constitute one loss, and only one Deductible shall be payable by the Company.

9.8. Deductible – General

The Insured and the Company must pay the Deductible amount stated in the Policy Schedule in respect of each and every Claim or loss. We are not liable for the amount of the Deductible.

9.9. Deductible – Our Investigation, Defence or Settlement Costs

Unless otherwise stated in the Schedule or Policy, costs incurred by Us in the investigation, defence or settlement of any Claim are subject to the Deductible.

9.10. Allocation

Where, between any Insured and any other person or the Company, any amount has been jointly or jointly and severally incurred, Our liability under this Policy is limited to the proportion which represents a fair and equitable allocation between the Insured and those other persons or the Company, taking into account the relative legal and financial exposures of, and the relative benefits obtained by, the Insured and those other persons or the Company.

Where any amount is incurred in respect of any Claim which arises from both covered matters and matters not covered by this Policy, Our liability is limited to the proportion which represents a fair and equitable allocation between any Company, the Insured and Us, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this Policy.

If the Insured and the Company and Us cannot agree on an allocation between covered and uncovered amounts and/or parties, the matter shall be submitted to binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory or Country in which this Policy is issued.

9.11. Claims by multiple Insureds

Where there is more than one Insured and/or Company under this Policy Our maximum liability for loss sustained by one or all Insureds and/or the Company shall not exceed the amount for which We would be liable for if all losses were sustained by any one Insured.

9.12. Proof of loss - Applicable to Extension 2.22 (Employee Theft and Third Party Crime)

It is a condition of cover under extension 2.22 (Employee Theft and Third Party Crime) that upon discovery the Company will;

- (a) furnish a proof of loss with full particulars to Us within six (6) months of such discovery, and prior to the expiration or termination of the Policy;
- (b) submit to examination under oath at Our request; and
- (c) produce all pertinent records at such times and places as We reasonably designate.

9.13. Valuation - Applicable to Extension 2.22 (Employee Theft and Third Party Crime)

We shall pay in respect of the following categories of loss covered under extension 2.22 (Employee Theft and Third Party Crime), on the basis of valuation set out below:

- (a) loss in respect of books of account or other records, the cost of blank books, pages, CD ROMs or discs or other blank materials to replace lost or damaged books of account or other records; and
- (b) the Australian dollar value of a foreign currency based on the cash rate of exchange published in the Australian Financial Review on the day the loss involving foreign currency is discovered.

10. General Conditions

Cover under this Policy is conditional upon the following:

10.1. Proposal Form Severability

The proposal form shall be construed as a separate application by each Insured and/or Company. With respect to the proposal form together with the declarations and statements contained therein, no statements in such proposal form or knowledge possessed by any Insured shall be imputed to any other Insured for the purpose of determining the availability of any cover hereunder to such Insured.

10.2. Stock offering

The Insured or the Company must inform Us of any intent to offer any of the Company's own securities (including but not limited to any bond, stock, note, debenture, share or other equity or debt security). Not less than 30 days prior to such offer We will require a copy of all filings and/or documents which have been or are to be presented to any relevant authority and/or the existing and/or prospective shareholders or stockholders of the Company based upon which We reserve the right to amend terms and conditions of this Policy in relation to such offer and charge an additional premium as required.

10.3. Limit and Deductible

- (a) Other than for extension 2.12 (Additional Non-Executive Directors Limit), Our total aggregate liability under Sections 1 and 2 of this Policy combined shall not exceed the Limit of Indemnity, which amount shall be inclusive of all Costs and all other amounts. The cover under extension 2.12 (Additional Non-Executive Directors Limit) is in addition to and not part of the Limit of Indemnity.
- (b) We shall only be liable under Section 1 and/or Section 2 of this Policy to pay in excess of the Deductible amount stated in the Schedule. Unless stated elsewhere in this Policy or in the Schedule:
 - (i) where We have paid Loss or Costs to or on behalf of the Insured for Claims made against the Insured and the Company has not provided indemnity to such Insured, the Deductible is the amount stated in the Schedule next to 1.1 Directors' and Officers' Liability;
 - (ii) where We have paid Loss or Costs on behalf of the Company for Claims made against the Insured and the Company is permitted or legally obligated to indemnify such Insured, the Deductible is the amount stated in the Schedule next to 1.2 Company Reimbursement;
 - (iii) where We have paid Loss or Costs on behalf of the Company for Claims made against the Company, the Deductible is the amount stated in the Schedule next to 1.3 Company Liability.

The Deductible stated in the Schedule:

- (i) applies to each and every Claim, Costs, fine or penalty, bail bond costs or Inquiry;
- (ii) includes all costs
- (iii) is to be borne by the Insured and/or the Company; and
- (iv) is not to be insured.

10.4. Insurance Contracts Act

We agree at all times to be bound by the provisions of the Insurance Contracts Act 1984 (Cth) (as amended from time to time) in respect of its relationship with the Insured and the Company and in respect of the terms and conditions of this Policy.

The Insured and the Company agree to be bound by the provisions of the Insurance Contracts Act 1984 (Cth) (as amended from time to time) in respect of its or their relationship with Us and in respect of this Policy.

10.5. Alteration to Risk

The Insured must notify Us as soon as practicable of any material alteration to the risk during the Policy Period including but not limited to, the Company failing to pay its debts, or going into voluntary or involuntary bankruptcy, administration, receivership or liquidation.

10.6. Subrogation

If We make a payment under this Policy, We are subrogated to the Insured's and the Company's rights of contribution, indemnity and recovery.

10.7. Geographic Limits

Unless otherwise specified elsewhere in this Policy, the cover under this Policy shall extend to legal liability arising anywhere in the world excluding the Dominion of Canada and the United States of America, and their territories and protectorates.

10.8. Jurisdictional Limits

The cover under this Policy shall extend to any Claim brought anywhere in the world excluding the Dominion of Canada and the United States of America, and their territories and protectorates, and excluding any Claim arising out of the enforcement of any judgment, order or award obtained within or determined pursuant to the laws of the Dominion of Canada or the United States of America, and their territories and protectorates.

10.9. Assignment of Interest

The Insured's and the Company's rights under this Policy cannot be assigned without Our prior written consent.

10.10. Cancellation

The Insured and the Company may cancel this Policy by notifying Us in writing, and We will allow a pro rata refund of Premium relating to the unexpired proportion of the Policy Period. Cancellation will be effective from the date that We are notified of the cancellation and is only available where there have been no notifications to or payments made by Us.

We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth) and We will provide a pro rata refund of Premium for the unexpired Policy Period. This pro rata refund of Premium is only available where there have been no notifications to or payments made by Us.

If the Company or the Insured has made a notification under this Policy then neither the Company nor the Insured is entitled to a refund.

10.11. Governing Law

In the event of a dispute arising under or in connection with this Policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

10.12. Terms of Payment

All Premiums due to Us under this Policy will be paid within 30 days from the Policy's inception.

10.13. Notices

The Company shall act on behalf of itself, all Subsidiaries and all Insured/s and/or Company/ Companies with respect to the giving and receiving of notice under this Policy, including but not limited to the giving of notice of any Claim or loss, the payment of Premiums, the receipt and acceptance of any endorsements attaching to and forming part of this Policy, and the exercising or declining to exercise any right to the grant of extension 2.10 (Extended Reporting Period).

10.14. Order of Payments

If payment of Loss is due under this Policy but the amount of such Loss in the aggregate exceeds or may exceed the remaining available Limit of Indemnity for this Policy, We are entitled to:

- (a) first pay such Loss for which coverage is provided under insuring clause 1.1 (Directors and Officers Liability) of this Policy; then
- (b) to the extent of any remaining amount of the Limit of Indemnity available after payment under 10.14 (a) above, pay such Loss for which coverage is provided under any other insuring clause or extension of this Policy.

Except as otherwise provided, We may pay Loss as it becomes due without regard to the potential for other future claims under the Policy or future payment obligations under the Policy.

The Company and the Insured agree that, where more than one Insured and/or Company is entitled to indemnity under the Policy, We are entitled (but not obliged) to make payments in respect of such claims under the Policy in the sequence in which the claims are received by it, irrespective of whether such payments might exhaust or erode the Limit of Indemnity.

10.15. Preservation of Indemnity

In the event and to the extent the Company is permitted or legally obligated to pay to or on behalf of an Insured by way of indemnification as a result of any Claim and fails or refuses to do so for any reason, We will pay on behalf of the Insured such Loss, subject to payment of the amount stated in the Schedule next to Deductible (b) by the Company or the Insured. However, the deductible will not be payable if the Company is unable to pay the amount of the deductible due to insolvency.