



Management Liability Insurance

Policy Wording

Your Award Winning Insurer



Management Liability Insurance

Policy Wording

Important Information

Please read the following information which does not form part of the operative wording of this policy.

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; or
- 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 Statement

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the Privacy Act 1988 (Cth).

Consent

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy.

How we collect your personal information

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

Why we collect personal information

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 9275 8500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at www.berkleyinaus.com.au

Who we disclose your personal information to

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

Personal information about others

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made

Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

Overseas Disclosure

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above

Accessing your personal information and dealing with complaints

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at www.berkleyinaus.com.au

Contact Details

Berkley Insurance Australia
Level 7, 321 Kent Street
SYDNEY NSW 2000
Ph: 02 9275 8500
Fax: 02 9261 2773
Email: australia@berkleyinaus.com.au
Web site: www.berkleyinaus.com.au

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Policy Wording

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Management Liability Insurance

Policy Wording

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 We will indemnify the Insured in accordance with, and subject to, the terms, conditions and exclusions of this Policy.

To the extent that any part of an exclusion is found to be invalid or unenforceable, the remainder of such 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 any Insured Person Loss arising from any Claim for a Wrongful Act which is first made against the Insured Person during the Period of Insurance 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 Person.

1.2 Company Reimbursement

We shall pay to or on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against an Insured Person during the Period of Insurance 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 Person.

1.3 Company Liability

We shall pay to or on behalf of the Company Loss arising from any Claim for a Wrongful Act which is first made against the Company during the Period of Insurance, 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 Person 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 Indemnity Limit shown in the Policy Schedule.

2.1 Advancement of Costs and Emergency Defence Costs

We will, to the fullest extent permissible by law and subject to the Indemnity Limit 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 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 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) We shall pay to or on behalf of any Insured Person, Costs in respect of any Claim, or Inquiry by an official body, related to the actual, alleged or threatened discharge, release or escape of Pollutants, or the clean-up, removal or treatment or monitoring of such Pollutants up to the amount of the sub-limit of indemnity for all payments under this extension specified in the Policy Schedule.
- (b) We shall pay to or on behalf of the Company, Costs in respect of any Claim, or Inquiry by an official body, related to actual, alleged or threatened discharge, release or escape of Pollutants, or the clean-up, removal or treatment or monitoring of such Pollutants 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, during the Period of Insurance.

2.3 Statutory Liability

- (a) We shall pay on behalf of an Insured Person, any Fines and Penalties in respect of a Claim which the Insured Person is ordered to pay pursuant to the laws of the Commonwealth of Australia and/or New Zealand and their States and Territories.
- (b) We shall pay on behalf of the Company, any Fines and Penalties and the reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses 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 and their States and Territories.
- (c) We shall pay the reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses associated with any Fines and Penalties covered under extension 2.3(a) and 2.3(b).

- (d) Where, pursuant to the laws of the Commonwealth of Australia and/or New Zealand and their States and Territories We are not permitted to insure pecuniary or administrative fines or penalties, We shall pay the reasonable and necessary legal costs, fees (including barrister fees and expert fees) and expenses associated with such pecuniary or administrative fines or penalties, provided that We shall not be liable for any payment in relation to fines and penalties which are compensatory in nature or which are calculated with reference to principles of compensation.

The coverage provided by extension 2.3 Statutory Liability shall not apply to any pecuniary penalties or administrative fines or penalties imposed:

- (i) pursuant to any consumer protection law;
- (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 Insured knew, or where a reasonable person in the circumstances ought to have known that the relevant act would contravene a law, but notwithstanding the Insured committed the act/conduct;
- (v) after the Insured has failed to comply with any enforcement order or remedial order.

Exclusion 4.3 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 Statutory Liability sub-limit specified in the Schedule.

2.4 Workplace Health and Safety Costs

- (a) We shall pay on behalf of an Insured Person, Costs incurred as a result of any Inquiry arising out of a workplace incident at the Insured's premises or premises where the Insured's Employees are undertaking the business of the Insured where such inquiry arises out of any investigatory request by the regulator empowered under statute in Australia or New Zealand to regulate workplace health and safety including to produce documents, attend an interview or attend on-site.
- (b) We shall pay on behalf of the Company, Costs incurred as a result of any Inquiry arising out of a workplace incident at the Insured's premises or premises where the Insured's Employees are undertaking the business of the Insured where such inquiry arises out of any investigatory request by the regulator empowered under statute in Australia or New Zealand to regulate workplace health and safety including to produce documents, attend an interview or attend on-site.

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

The coverage provided by extension 2.4 Workplace Health and Safety Costs shall only apply to an Inquiry where the notice legally requiring the attendance of the Insured is first served during the Period of Insurance.

2.5 Continuous Cover

Notwithstanding exclusion 4.16(c) Prior or Pending Claims and Circumstances of this Policy, We will cover the Insured 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 Insured when the Insured first became aware of such circumstance; and
- (b) We continued without interruption to be the management liability insurer of the Insured up until this Policy came into effect; and
- (c) had We been notified by the Insured of the circumstance when it or they first became aware of it, 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 Insured's duty of disclosure and an absence of fraudulent misrepresentation by 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 Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance; and
- (f) the Claim or the Inquiry or the circumstance have not previously been notified to Us or any other insurer.

If the Insured was 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 Indemnity Limit provided for Claims covered by this extension 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

We shall pay Costs incurred by or on behalf of the Insured with Our prior written consent (such consent not to be unreasonably withheld) for legal representation at an Inquiry, provided said Inquiry does not fall for cover under extension 2.4 Workplace Health & Safety Costs or 2.20 Tax Audit Costs (whether or not the applicable sub-limit has been exhausted).

The coverage provided by extension 2.6 General Inquiry Costs shall only apply to an Inquiry where the notice legally requiring the attendance of the Insured is first served during the Period of Insurance.

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 Claims Specialist Advice

The Insured 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.

2.8 Outside Directorships

We shall pay to or on behalf of an Insured Person Loss arising from any Claim which is first made against the Insured Person during the Period of Insurance and notified to Us in accordance with the terms of this Policy, where such Insured Person, 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;
- (b) the cover provided under this extension applies in excess of any other directors and officers liability or management liability insurance in force for such Outside Entity; and
- (c) the cover provided under this extension shall not apply in respect of any Claim brought by any person or entity holding beneficially or otherwise or who is in control of more than 20% of the issued share capital of the Outside Entity, whether such Claim is made in the name of the Outside Entity or not;
- (d) 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 Outside Entity;
 - (ii) the appointment to the Outside Entity 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 Outside Entity, 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 Outside Entity.

2.9 Extended Reporting Period

In the event that this Policy is not renewed or replaced, other than for non-payment of premium, the Insured shall have the right to an extension of the cover granted under insuring clauses 1.1 Directors and Officers Liability and 1.2 Company Reimbursement only, 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 notifies Us in writing that they wish to exercise the Extended Reporting Period prior to expiration of the Period of Insurance; and
 - (ii) the Insured shall pay the additional premium to Us within thirty (30) days of the expiration of the Period of Insurance; and
 - (iii) 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 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 has made reasonable efforts to secure such cover;
- c. this extension is not available if the Policy is cancelled or avoided;
- d. this extension is not available if a Takeover, Merger or Administration has occurred;
- e. the Indemnity Limit stated in the Schedule shall not be increased in any way by the provisions of this extension; and
- f. this extension is not available if the additional premium is not paid in accordance with clause 2.9(b) (ii).

2.10 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 Period of Insurance to any Insured Person who voluntarily retired from their position as a Director or Officer of the Company during the Period of Insurance, other than in connection with a Takeover, Merger or Administration but only with respect to a Wrongful Act committed by such Insured Person prior to their date of retirement.

Nothing in this extension increases the Indemnity Limit.

2.11 Additional Dedicated Limit for Directors

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

The Additional Dedicated Limit for Directors 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 Indemnity Limit.

The Deductible applicable to cover provided by this extension is the Deductible stated in the Schedule next to 1.1 Directors' & Officers' Liability.

2.12 Extradition Bail Bond Costs

We shall pay on behalf of an Insured Person Extradition Bail Bond Costs arising from an Extradition Proceeding which first occurs and is notified to Us during the Period of Insurance.

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.

2.13 Deprivation of Assets Expenses

We shall pay on behalf of an Insured Person Deprivation of Assets Expenses arising from a Deprivation of Assets Proceeding which first occurs and is notified to Us during the Period of Insurance 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.

2.14 Prosecution Costs

We shall pay on behalf of an Insured Person Prosecution Costs in connection with a Claim which first occurs and is notified to Us during the Period of Insurance.

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.

2.15 Reputation Protection Expenses

This Policy shall extend to include Reputation Protection Expenses.

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

2.16 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 Period of Insurance.

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.

2.17 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 Period of Insurance 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.

2.18 Third Party Discrimination or Sexual Harassment Entity Coverage

We will indemnify the Company for Loss arising from any Third Party Discrimination Claim or Third Party Sexual Harassment Claim which is first made against the Company during the Period of Insurance 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 Third Party Discrimination or Third Party Sexual Harassment sub-limit of indemnity specified in the Schedule.

The Company will be liable for Third Party Discrimination or Sexual Harassment Deductible stated in the Schedule for any Claim made under this extension.

2.19 Attendance Compensation

We shall pay the Company, Attendance Compensation resulting from the attendance of any Insured Person:

- (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.

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.

2.20 Tax Audit Costs (including ATO Risk Reviews)

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 Period of Insurance and notified Us of such notice during the Period of Insurance.

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

- (a) for the 5 taxation years prior to receipt of the Tax Audit Notice, all taxation and other returns were submitted to the relevant Taxation Authority within the time limits prescribed by all relevant statutes and/or regulations or as required by or on behalf of a Taxation Authority within the extensions of time granted by such authority;
- (b) for the 5 taxation years prior to receipt of the Tax Audit Notice, the Taxation Authority was notified of any error/s or deficiency/deficiencies in any information, return of income or any other documentation furnished to the Taxation Authority without delay once the company or any other person acting on its behalf became aware of the error/s or deficiency/ies;
- (c) for the 5 taxation years prior to receipt of the Tax Audit Notice, all taxes due by the Company were paid by the due date or within any extension granted by the Taxation Authority;
- (d) for the 5 taxation years prior to receipt of the Tax Audit Notice, full and complete disclosure of all income including capital gains as required by any legislation has been made by the Company or any other person acting on its behalf to the relevant Taxation Authority;
- (e) for the 5 taxation years prior to receipt of the Tax Audit Notice, all correspondence, requests and inquiries from the Taxation Authority are dealt with without delay and within the time limits prescribed by all relevant statutes and/or regulations or as required by or on behalf of a Taxation Authority within the extensions of time granted by such Taxation Authority;
- (f) the Company does everything in its control to allow Us direct access to the Accountant or Registered Tax Agent and full cooperation by them is given to Us;
- (g) at Our request the Company at its own expense 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 possession of the Insured Person, the Registered Tax Agent, lawyers or other professional advisor which We shall require in connection with any claim made under extension 2.20 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.

For the avoidance of doubt, there is no cover available to Directors, Officers or Employees under this section.

2.21 Employee Theft and Customer or Contractor 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 identifiable Customer or Contractor;

provided always that:

- (i) such loss is first discovered by the Insured during the Period of Insurance 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 Period of Insurance;
- (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 by, or the reasonable cause for suspicion of, the Company, of dishonest or fraudulent conduct on the part of the Employee, Customer or Contractor 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 Insured shall take all reasonable steps to obtain reimbursement from and preserve the assets of 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 recovered 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 2.21 Employee Theft and Customer or Contractor Crime shall not exceed the amount of the Employee Theft and Customer or Contractor Crime sub-limit of indemnity specified in the Schedule.

2.22 Theft and Crime Investigation and Data Reproduction Costs

- (a) We will indemnify the Company for Theft and Crime Investigation Costs.
- (b) We will indemnify the Company for Data Reproduction Costs.

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 2.21 Employee Theft and Customer or Contractor Crime.

2.23 Identity Fraud Expenses

In the event that a party other than an Insured Person 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 Identity Fraud Expenses.

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.

2.24 Internet Liability

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

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.

2.25 Run off cover following Takeover, Merger or Administration of the Company

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

In the event of such Takeover, Merger or Administration and at the written request of the Company, We may provide a quotation for a multi-year run-off policy for a period of up to 84 months. The premium payable for the multi-year run-off policy:

- (a) must be paid to Us within 30 days of inception of multi-year run-off policy;
- (b) shall be deemed to be fully earned at inception of the multi-year run-off policy; and
- (c) is not refundable.

In the event the premium is not paid in accordance with clause 2.25 (a) no run off cover will be provided by Us.

2.26 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) an administrator, receiver or liquidator being appointed to the Subsidiary voluntarily or otherwise;

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

2.27 Intellectual Property

We will pay to or on behalf of any Insured Person, Loss arising from any Claim for any inadvertent infringements or alleged inadvertent infringement of any copyright, patents, or other intellectual property rights.

2.28 New Subsidiary

- (a) If during the Period of Insurance, the Company acquires or creates an Australian or New Zealand domiciled Subsidiary, coverage under this Policy shall extend to such new Subsidiary, but only in respect of a Wrongful Act committed or alleged to have been committed by an Insured Person subsequent to the date of such acquisition or creation; however
- (b) If the acquired or created Subsidiary referred to in clause (a), has total assets which exceed 25% (twenty-five percent) of the total consolidated assets of the Company as shown in their last consolidated financial statement or annual report, coverage shall only be provided for 30 days subsequent to the date of such acquisition or creation.

Coverage provided under clause (b) may be extended upon receipt and acceptance by Us of additional underwriting information and may be subject to payment of additional Premium having regard to the nature of the risk to be assumed by Us.

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 Person 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 Attendance Compensation

Means the amount referred to in the Attendance Compensation sub-limit of indemnity specified in the Schedule.

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 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 cover for any Insured Person:
 - (i) a written demand by a third party against an Insured Person for compensation, damages or for non-monetary relief;
 - (ii) a civil proceeding brought by a third party against an Insured Person for recovery of compensation, damages or for non-monetary relief;
 - (iii) any criminal proceeding against, or any proceeding for extradition of an Insured Person;
 - (iv) any formal administrative or regulatory proceeding against an Insured Person, commenced by the filing of

- notice of charges, formal investigative order or similar document;
 - (v) any Employment Practices Claim made against an Insured Person; or
 - (vi) any Third Party Discrimination or Third Party Sexual Harassment Claim against an Insured Person.
- (b) for the purpose of cover for the Company:
- (i) a written demand to, or civil proceedings by a third party against the Company for compensation or damages;
 - (ii) any criminal proceeding against the Company;
 - (iii) any formal administrative or regulatory proceeding against the Company, commenced by the filing of notice of charges, formal investigative order or similar document;
 - (iv) for the purposes of extension 2.17 Employment Practices Liability Entity Cover, Claim also includes a written demand to, or civil proceedings by a third party against the Company seeking reinstatement of employment.
- (c) for the purpose of extensions 2.3 Statutory Liability, 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 Computer System

Means an information technology system made up of a network of one or more items of computer hardware, software, or programmes and the electronic data stored thereupon that share a central storage system, and any other peripheral devices. Computer System shall also include any electronic devices and/or electrical equipment.

3.7 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 of the Company, 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.

3.8 Costs

Means the reasonable and necessary:

- (a) legal costs, fees (including barrister fees and expert fees) and expenses incurred in investigating and defending a Claim and of any appeal;
- (b) costs of legal representation at any Inquiry and the legal and investigation costs associated with the preparation and defence for said Inquiry.

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

3.9 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 fraud investigation; or
- (h) any criminal investigation into the Company or an Insured Person, but only where such investigation relates solely to the business purposes of the Company.

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

3.10 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 Period of Insurance).

3.11 Customer or Contractor

Means a natural person who is, or was an employee of:

- (a) a customer, vendor, service provider or business invitee of the Company;
- (b) any contractor or labour hire company providing services to the Company.

Customer or Contractor does not include:

- (i) any Employee or Director or Officer;
- (ii) any person who owns or controls any of the Company's issued share capital;
- (iii) a person acting in collusion with any Employee; or
- (iv) any unidentifiable or unknown natural person.

3.12 Data

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

3.13 Data Reproduction Costs

Means 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 2.21 Employee Theft and

Customer or Contractor 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.

Data Reproduction Costs shall not include wages, salaries, time costs and expenses or other remuneration of any Insured Person, or the time or expenses incurred by the Company's clients.

3.14 Deductible

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

3.15 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 a Deprivation of Assets Proceeding.

3.16 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 Person or creating a charge over real property or personal assets of an Insured Person.

3.17 Direct Financial Loss

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

3.18 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 2.8 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 3.18 (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.

3.19 Employee

Means any natural person working under a contract of service with the Company or any natural person who is a volunteer, secondee or engaging in work experience, provided always that the Company has the right to govern and direct the person in the performance of such services. Employee does not mean independent contractors, consultants, labour hire personnel or external representatives of the Company.

For the purpose of extension 2.4 Workplace Health and Safety Costs, Employee includes a labour hire worker where they are deemed under applicable workplace health and safety legislation to be a worker of the Company.

For the purposes of extension 2.21 and 2.22, Employee does not include a director of the Company.

For the purposes of an Employment Practices Claim, Employee includes a prospective Employee.

3.20 Employment Practices Claim

Means a written demand or civil proceedings for compensation or damages (including a written demand or civil proceeding seeking reinstatement of employment) brought by the Company's Employee/s arising from 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).

3.21 Employee Theft

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

3.22 Extradition Bail Bond Costs

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

3.23 Extradition Proceeding

Means a written request for the extradition of an Insured Person, a warrant for the arrest of an Insured Person or other proceedings commenced by a writ, complaint, summons or other originating process against an Insured Person 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 Person is not required for cover for an Extradition Proceeding.

3.24 Fines and Penalties

Means any legally permissible pecuniary or administrative fines or penalties, but does not include fines and penalties which are compensatory in nature or which are calculated with reference to principles of compensation.

3.25 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.

3.26 Fraudulent Act

Means:

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

3.27 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.

3.28 Identity Fraud Expenses

Means 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.

3.29 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.

3.30 Inquiry

Means any:

- (a) official investigation, inquiry or examination into the affairs of the Company, or the conduct of an Insured Person as a Director or Officer or Employee of the Company, which the Insured Person or Company is legally compelled to attend or provide documents by official notice or process;
- (b) inquest or royal commission where the insured is legally compelled to appear or satisfies any legal requirement to appear as an interested party; or
- (c) investigation or inquiry into the affairs of the Company or the conduct of an Insured Person as a Director or Officer or Employee of the Company if such investigation or inquiry has been requested by a regulator established under statute.

Inquiry does not include any routine regulatory supervision or inspection.

3.31 Insured

Means an Insured Person and/or the Company.

3.32 Insured Person

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

3.33 Internet Activities

Means:

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

3.34 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; or
- (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.

3.35 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.

3.36 Indemnity Limit

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

3.37 Listed Human Disease

Means

- (a) any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or
- (b) any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced;

regardless of when the disease is so listed or identified

3.38 Loss

(a) Means in respect of a covered Claim:

- (i) damages, judgments and costs awarded by a court or tribunal empowered to do so;
- (ii) settlements entered into with Our prior written consent (such consent not to be unreasonably withheld);
- (iii) Costs;

(b) Means in respect of the following (whether in respect of a covered Claim or otherwise):

- (i) for the purpose of extension 2.3 – Statutory Liability;
- (ii) for the purpose of extension 2.12 - Extradition Bail Bond Costs;
- (iii) for the purpose of extension 2.13 - Deprivation of Assets Expenses;
- (iv) for the purpose of extension 2.14 - Prosecution Costs;
- (v) for the purpose of extension 2.15 - Reputation Protection Expenses;
- (vi) for the purpose of extension 2.16 - Crisis Loss;
- (vii) for the purpose of extension 2.19 - Attendance Compensation;

- (viii) for the purpose of extension 2.20 - Tax Audit Costs;
 - (ix) for the purpose of extension 2.21 - Direct Financial Loss;
 - (x) for the purpose of extension 2.22 - Theft & Crime Investigation Costs and Data Reproduction Costs;
 - (xi) for the purpose of extension 2.23 - Identity Fraud Expenses.
- (c) Notwithstanding anything in paragraphs (a) and (b) above, Loss shall not include:
- (i) any amount in respect of any claim (including a Claim) or conduct deemed uninsurable by law;
 - (ii) fines and penalties, taxes, except for Fines and Penalties covered under extension 2.3 Statutory Liability;
 - (iii) punitive, exemplary or aggravated damages or any, except for punitive, exemplary or aggravated damages arising from any Claim against any Insured Person for libel, slander or defamation.
- (d) For the purposes of extensions 2.17 Employment Practices Liability Entity Coverage and 2.18 Third Party Discrimination or Sexual Harassment Entity Coverage, Loss shall also not include any liability or costs incurred for or in respect of the modification of any building or property to make such building or property more accessible to any person.
- (e) For the purposes of a Third Party Sexual Harassment Claim, Loss does not include Costs of any criminal investigation or prosecution arising from the same allegations or facts as a Third Party Sexual Harassment Claim.

3.39 Matter

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

3.40 Money

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

3.41 Nominated Subsidiary

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

3.42 Outside Entity

Means any entity that is not the Company and:

- (a) is a not for profit organisation;
- (b) is not registered or approved for direct or indirect trading on a national securities exchange or over the counter trading system anywhere in the world;
- (c) is not located, incorporated or domiciled or does not operate in the United States of America or Canada or any territory under its jurisdiction; or
- (d) is not an authorised deposit taking institution, finance company, leasing company, friendly society, life insurance company, general insurance company, reinsurance company, investment company, mutual fund, collective investment scheme, fund manager, investment adviser, responsible entity of a managed investment scheme, trustee company, money market corporation, investment bank or any broker or dealer in securities or

commodities, mortgage broker, real estate agent, stock exchange, commodities exchange, futures exchange, custodian, clearing house, registrar, medical benefits association or hospital benefits association or organisations of a similar nature.

3.43 Period of Insurance

Means the policy period specified in the Schedule.

3.44 Policy

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

3.45 Pollutant

Means any solid, liquid, gaseous, biological, radiological, 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, chemicals, or waste materials (including but not limited to any materials to be recycled, reconditioned or reclaimed).

Pollutant shall not include any nuclear or radioactive materials, asbestos or silica of any sort.

3.46 Premises

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

3.47 Premium

Means the premium specified in the Schedule.

3.48 Property

Means tangible personal property other than Money or Securities.

3.49 Prosecution Costs

Means the reasonable and necessary costs incurred by an Insured Person 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 Person or creating a charge over real property or personal assets of an Insured Person;
- (b) an interim or interlocutory order disqualifying an Insured Person from holding office or from managing a company; or
- (c) a judicial order requiring an Insured Person to be confined to a specific domestic residence or to be held in custody pending trial.

3.50 Reputation Protection Expenses

Means the reasonable and necessary costs incurred by the Company with Our prior written consent (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 a Director or Officer arising from a Claim.

3.51 Retroactive Date

Means the date specified in the Schedule.

3.52 Schedule

Means the Schedule to this Policy.

3.53 Securities

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

3.54 Social Engineering Fraud

Means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

- (a) transferring, paying or delivering any money or Securities from an account maintained by the Insured to another person or entity;
- (b) transferring or delivering any property to another person or entity;
- (c) revealing confidential information; or
- (d) changing or altering bank account or payment details of any person or entity.

3.55 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; or
- (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 Period of Insurance:
 - (i) controls the composition of the board of directors;
 - (ii) controls more than half of the voting stock;
 - (iii) holds more than half of the issued share capital; or
- (c) any entity other than those referred to in paragraph 3.55 (a) – (b) and which is a Nominated Subsidiary.

3.56 Takeover, Merger or Administration

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 of the board of directors; or
- (d) an administrator, receiver, liquidator being appointed voluntarily or otherwise.

3.57 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.

3.58 Tax Audit Notice

Means any notification from a Taxation 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) termination payments tax;
- (g) land tax;
- (h) stamp duty; or
- (i) 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) – (i) above.

3.59 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), termination payments tax, land tax, stamp duty or sales tax. Taxation Authority shall not include any customs or excise body, agency or authority.

3.60 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.

3.61 Theft and Crime Investigation Costs

Means the reasonable costs incurred and paid by the Company to an independent investigator, accountant, solicitor or other consultant to establish the existence and the amount of any Direct Financial Loss covered by extension 2.21 Employee Theft and Customer or Contractor Crime of this Policy, and to provide a recommendation as to how to avoid such loss in the future.

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

3.62 Third Party Discrimination Claim

Means a Claim in respect of any actual or alleged unlawful discrimination against a third party based on an attribute which is protected by the law of anti-discrimination (for example, race, religion, age, sex or disability).

3.63 Third Party Internet Site

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

3.64 Third Party Sexual Harassment Claim

Means a Claim in respect of any actual or alleged sexual harassment, including unwelcome sexual advances, requests for sexual favours or similar conduct of a sexual nature against a third party.

3.65 We, Us, Our

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

3.66 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 Person committed solely in such person's actual or deemed capacity as an Insured Person.
- (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.

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

4. Exclusions Applicable to All Policy Sections

We are not liable to make any payment under this Policy:

4.1 Asbestos

arising directly or indirectly from in connection with or in any way involving, asbestos or asbestosis.

4.2 Benefits

arising directly or indirectly from or in connection with any law or obligation pursuant to or governed by any workers' compensation regime, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, superannuation benefits, unpaid wages earned while employed by the Company, commissions, or any similar law or obligation whatsoever.

4.3 Bodily Injury or Property Damage

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, Third Party Discrimination Claim or Third Party Sexual Harassment Claim;
- (c) or any Claim for libel, slander or defamation.

4.4 Company versus Insured Person

for any Claim brought or maintained by or on behalf of the Company against any Insured Person. 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) against an Insured Person; or
- (c) any Claim by a liquidator, administrative receiver or receiver; or
- (d) any Claim arising from a shareholder derivative action.

4.5 Cyber Liability and Social Engineering

arising directly or indirectly from or in connection with:

- (a) the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or
- (b) Social Engineering Fraud.

4.6 Dishonesty, Fraud or Wilful Breach of Duty

- (a) arising directly or indirectly from or in connection with any dishonest, fraudulent, criminal, reckless or malicious act or omission of any Insured; or
- (b) arising out of conduct which involves wilful breach of duty in relation to the Company or any breach of Sections 182, 183, 601FD, 601FE and 601JD of the Corporations Act 2001 (Cth).

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

This exclusion shall not apply to extensions 2.21 Employee Theft and Customer or Contractor Crime and 2.22 Theft and Crime Investigation and Data Reproduction Costs.

4.7 Employee-Related Matters

arising directly or indirectly from or in connection with:

- (a) any employment benefits earned while in the employment of the Company;
- (b) 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 (however this shall not include back-pay being the wages for which the Insured is liable to pay to the Employee between the time of incorrect termination and reinstatement of the Employee);
- (c) contractual damages based upon the terms of a contract of employment;
- (d) any amount payable by the Insured in respect of an unfair contract of employment.

4.8 Fines and Penalties

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 Statutory Liability.

4.9 Fire or Premises Damage

arising directly or indirectly from or in connection with any fire damage, damage or destruction to any premises or building.

4.10 Illegal Copies of Programs

for any data reproduction fees, costs or expenses claimed under clause b) of extension 2.22 Theft and Crime Investigation and Data Reproduction Costs where the reconstitution of data is required as a result of the Insured Person knowingly using illegal copies of programs.

4.11 Insolvency or Administration

arising directly or indirectly from or in connection with 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.

4.12 Listed Human Disease

arising directly or indirectly from, related to or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

4.13 Major Shareholders

arising from any Claim brought by 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.

4.14 Personal Profit

arising directly or indirectly from or in connection with any Insured gaining in fact any profit or advantage, or receiving any remuneration, to which they were or are not legally entitled.

This exclusion shall not apply to extensions 2.21 Employee Theft and Customer or Contractor Crime and 2.22 Theft and Crime Investigation and Data Reproduction Costs.

4.15 Pollution

arising directly or indirectly from or 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.

This exclusion does not apply to extension 2.3 Statutory Liability.

4.16 Prior or Pending Claims and Circumstances

arising directly or indirectly from or in connection with any:

- (a) Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Insured before the Period of Insurance,
- (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 before the Period of Insurance,

- (c) fact, circumstance, act, omission or claim which, prior to the Period of Insurance, the Insured was aware, or should reasonably have been made 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, where such a date is specified in the Policy Schedule.

4.17 Product Liability and Product Recall

arising directly or indirectly from or in connection with any actual or alleged liability of the Insured arising directly or indirectly from or in respect of:

- (a) the manufacture, distribution and/or sale of products by or on behalf of the Insured; or
- (b) the recall of any products manufactured, distributed and/or sold by or on behalf of the Insured.

This exclusion shall not apply to extension 2.15 Reputation Protection Expenses or extension 2.16 Crisis Costs.

4.18 Securities Offering

arising directly or indirectly from or in connection 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.

4.19 Radiation

arising directly or indirectly from or 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.

4.20 Retroactive Date

arising directly or indirectly from or in connection with any:

- (a) Wrongful Act occurring;
- (b) events or incidents which give rise to an Inquiry, Extradition Proceeding, Deprivation of Assets Proceeding, Crisis Event occurring;
- (c) Tax Audit Notice received;
- (d) Employee Theft, Theft or Fraudulent Act occurring;
- (e) Internet Activities occurring;

prior to the Retroactive Date.

4.21 Sanction

where such payment would be in violation of any sanction, prohibition or restriction with which We are legally obligated to comply.

4.22 Services Exclusion

arising directly or indirectly from or in connection with any actual or alleged services, including but not limited to professional services provided by or on behalf of the Insured.

This exclusion shall not apply to extension 2.15 Reputation Protection Expenses, extension 2.16 Crisis Costs, or extension 2.18 Third Party Discrimination or Sexual Harassment Entity Coverage.

4.23 War and Terrorism

arising directly or indirectly from or in connection with:

- (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 4.23 (a) - 4.23 (d) above.

4.24 Warranties and Guarantees

arising directly or indirectly from or in connection with 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.

5. Duplication of Cover

- (a) We are not liable to make any payment under section 1 in respect of any category or Loss where an Insured would have been entitled to cover for that category of Loss under extension/s 2.2, 2.3, 2.4, 2.6, 2.7, 2.12, 2.13, 2.14, 2.15, 2.16, 2.17, 2.18, 2.19, 2.20, 2.21, 2.22, 2.23, 2.24, and 2.27 but is not covered because of the operation of an exclusion applicable to that extension or an Insured's failure to meet a condition, proviso or qualification to that cover;

- (b) Where an Insured is entitled to cover for a category of Loss under both section 1 and any extension/s under section 2, the cover available under this Policy for that category of Loss is limited to the sublimit applicable to that extension and subject to the Deductible applicable to that extension.

6. Exclusions Applicable to Insuring Clause 1.3 (Company Liability)

We are not liable to make any payment under insuring clause 1.3 Company Liability arising directly or indirectly from or in connection with any actual or alleged:

6.1 Anticompetitive Behaviour

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.

6.2 Intellectual Property Rights

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

6.3 Financial Commitments

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

6.4 Employment Practices Claims

conduct leading to any Employment Practices Claim, other than as covered under extension 2.17 Employment Practices Liability Entity Coverage.

7. Exclusions Applicable to Extension 2.20 (Tax Audit Costs)

We are not liable for Tax Audit Costs under extension 2.20 Tax Audit Costs in respect of Tax Audit Costs arising directly or indirectly from or in connection with any:

7.1 Taxation Authority Requests

delay, refusal or failure to comply with any request made by or on behalf of a Taxation Authority for the production of documents or the furnishing of information by the Company.

7.2 Non-Audit Inquiries

inquiries by a Taxation Authority which are not related to an identified intention to conduct an audit or tax risk review or likely future audit or tax risk review.

7.3 Geographical Limitation

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 2015, Customs (Prohibited Exports) Regulations 1958, Customs (Prohibited Imports) Regulations 1956 or Commerce (Trade Descriptions) Regulation 2016.

7.5 Prior or Pending Investigations

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 Period of Insurance. Receipt of such communication will have occurred where the Taxation Authority makes communication with the Company or any other person acting on its behalf.

7.6 Fraudulent Acts

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

7.7 Penalties

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

audit or investigation of a return of income that has not been prepared or reviewed by an 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 Extensions 2.21 (Employee Theft and Customer or Contractor Crime) and 2.22 (Theft & Crime Investigation and Data Reproduction Costs)

We are not liable for Direct Financial Loss under extension 2.21 Employee Theft and Customer or Contractor Crime or extension 2.22 Theft and Crime Investigation and Data Reproduction Costs arising directly or indirectly from or in connection with:

8.1 Agent Acts

any act, error or omission of any independent contractor working under a contract for services, broker, merchant, solicitor accountant, or other external professional adviser/representative.

8.2 Confidential Information

the loss or misuse of confidential information, material or data.

8.3 Dishonest Board or Directors

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

loss of income or profit.

8.5 Consequential Damage

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 2.21 (Employee Theft and Customer or Contractor Crime).

8.6 Surrendered Money, Securities, Property

loss resulting from an Insured Person 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 Person.

8.7 Money Security and Property not in the Insured's Custody

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 and who is not an Employee, Director or Officer of the Company.

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

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

- (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 Person 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

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 Geographical Limits

any dishonest, fraudulent, criminal or malicious act 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 must give written notice to Us of all Claims under this Policy as soon as practicable after the Claim is made and prior to the expiration or termination of the Policy or any Extended Reporting Period.
- (b) The Company shall give written notice to Us of all discovery of conduct or losses falling under extension 2.21 Employee Theft and Customer or Contractor Crime of this Policy as soon as reasonably practicable following such discovery and prior to the expiration or termination of the Policy or any Extended Reporting Period.

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 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 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 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 Person under this Policy.

9.4 Conduct of Proceedings

We shall be entitled at any time to conduct, in the name of the Insured the defence or settlement of any Claim or to prosecute in the name of the Insured Person 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 Person in respect of any Inquiry if We elect to do so.

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

9.5 Settlement

The Insured agrees 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 We have not consented.

9.6 Right to Contest

We may not require any Insured 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 Person's prospects of successfully defending the Claim. Senior Counsel shall be appointed by agreement of the Insured Person 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 does not agree, then the Insured 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 Person or Company; and
 - (ii) the maximum amount payable by Us shall not exceed the Indemnity Limit.
- (b) Where under extension 2.21 Employee Theft and Customer or Contractor 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 must pay the Deductible amount stated in the Policy Schedule in respect of each and every Loss payable under this Policy. 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 Person 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 Person 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 Person 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 Person 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 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 Insured Persons

Where there is more than one Insured under this Policy Our maximum liability for Loss sustained by one or all Insured Persons 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 Person.

9.12 Proof of loss - Applicable to Extension 2.21 (Employee Theft and Customer or Contractor Crime)

It is a condition of cover under extension 2.21 Employee Theft and Customer or Contractor 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 2.21 (Employee Theft and Customer or Contractor Crime)

We shall pay in respect of the following categories of loss covered under extension 2.21 Employee Theft and Customer or Contractor 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. 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 Person shall be imputed to any other Insured Person for the purpose of determining the availability of any cover hereunder to such Insured Person.

10.2 Limit and Deductible

- (a) Other than for extension 2.11 Additional Dedicated Limit for Directors, Our total aggregate liability under Sections 1 and 2 of this Policy combined shall not exceed the Indemnity Limit, which amount shall be inclusive of all Costs and all other amounts. The cover under extension 2.11 Additional Dedicated Limit for Directors is in addition to and not part of the Indemnity Limit.
- (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 to or on behalf of an Insured Person for Claims made against such Insured Person and the Company has not provided indemnity to such Insured Person, the Deductible is the amount stated in the Schedule next to 1.1 Directors' and Officers' Liability;
 - (ii) where We have paid Loss on behalf of the Company for Claims made against the Insured Person and the Company is permitted or legally obligated to indemnify such Insured Person, the Deductible is the amount stated in the Schedule next to 1.2 Company Reimbursement;
 - (iii) where We have paid Loss 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 Loss payable under this Policy; and
- (ii) includes all costs; and
- (iii) is to be borne by the Insured; and
- (iv) is not to be borne by an Insured Person.

10.3 Alteration to Risk

The Insured must notify Us as soon as practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

- (a) the Company going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or the Company failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and
- (b) any material change to the nature of the activities undertaken by the Company.

Where the Insured fails to notify Us as required under this clause or there is any material alteration to the risk during

the Policy Period, We may be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

10.4 Subrogation

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

10.5 Geographical Limits

Unless otherwise specified elsewhere in this Policy, the cover under this Policy shall extend to legal liability arising from Wrongful Acts committed anywhere in the world excluding the Dominion of Canada and the United States of America, and their territories and protectorates, except for coverage under extensions 2.20 Tax Audit Costs and 2.21 Employee Theft and Customer or Contractor Crime where coverage shall only extend to legal liability arising from Wrongful Acts committed in within Australia or New Zealand.

10.6 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, except for coverage under extensions 2.20 Tax Audit Costs and 2.21 Employee Theft and Customer or Contractor Crime where coverage shall only extend to Claims brought within Australia or New Zealand.

10.7 Assignment of Interest

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

10.8 Cancellation

- (a) The Insured 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 Period of Insurance. Cancellation will be effective from the date that We are notified of the cancellation.
- (b) We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth) and will provide a pro rata refund of Premium for the unexpired Period of Insurance.

The Insured will not be entitled to a refund of premium under clause 10.8 (a) and 10.8 (b) if the Insured has made a notification under this Policy or if We have made any payments under this Policy.

10.9 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.

10.10 Terms of Payment

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

10.11 Notices

The Company shall act on behalf of itself, all Subsidiaries and all Insured Persons 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 2.9 (Extended Reporting Period).

10.12 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 Indemnity Limit 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 Indemnity Limit available after payment under 10.12 (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 Insured agrees that, where more than one Insured 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 Indemnity Limit.

10.13 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 Person 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 Person such Loss, subject to payment by the Company or an Insured Person of the Deductible stated in the Schedule next to 1.2 Company Reimbursement. However, the Deductible will not be payable if the Company is unable to pay the amount of the Deductible due to insolvency.

10.14 Confidentiality

The Insured must not disclose the terms, the nature or the Limit of Liability or the premium payable under this Policy, to any third party, including disclosure in the Company's annual report, except where:

- (a) We provide our written consent; or
- (b) disclosure is required by law.

10.15 Nothing in an exclusion shall be interpreted as widening cover

No words in an exclusion shall be interpreted as widening cover extended by any insuring clause or extension in this Policy.