

Directors & Officers Liability Insurance Policy

Wording Document

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Directors & Officers Liability Insurance Policy

Important Information

Please read the following information

A. Your Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; 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 Professional Indemnity 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) 92758500 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

E. Contact Details

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Directors & Officers Liability Insurance Policy

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Directors & Officers Liability Insurance Policy

In consideration of the payment of the premium and in reliance upon all statements made and information provided to Berkley Insurance Australia ABN 53 126 559 706 the "Insurer", including statements made in the Proposal Form and materials accompanying it and subject to all terms, conditions and limitations of this Policy, the Insurer and the Insured and the Company agree as follows:

1. Insuring Clauses

1.1 Directors & Officers Liability

The Insurer shall pay to or on behalf of the Insured any Loss resulting from any Claim which is first made against the Insured during the Policy Period and notified to the Insurer in accordance with the terms of this Policy, except when and to the extent that the Company has granted indemnification as permitted or required by law to the Insured.

1.2 Company Reimbursement Liability

The Insurer shall pay on behalf of the Company any Loss resulting from any Claim which is first made against an Insured during the Policy Period and notified to the Insurer in accordance with the terms of this Policy, but only when and to the extent that the Company has granted indemnification as permitted or required by law to the Insured.

1.3 Legal Representation Expenses

In respect of any Formal Investigation, the Insurer will pay Legal Representation Expenses of the Insured to or on behalf of:

- 1.3.1 the Insured, except when and to the extent that the Company has granted indemnification as permitted or required by law to the Insured; or
- 1.3.2 the Company, but only when and to the extent that the Company has granted indemnification as permitted or required by law to the Insured.

This cover only applies where the notice compelling the Insured's attendance at the Formal Investigation is first served on the Insured in the Policy Period, or Non-Renewal Discovery Period if applicable.

2. Extensions

Subject to all of the terms, conditions, exclusions and limitations of this Policy, cover is extended as follows. These Extensions, other than Extension 2.7 (Non-Executive Directors' Additional Limit), do not increase the Limit of Liability.

2.1 Advance Payment of Defence Costs and Legal Representation Expenses

The Insurer shall, subject to the Limit of Liability and any applicable deductible, advance Defence Costs and Legal Representation Expenses on an ongoing basis prior to the final payment or settlement of any Claim or Formal Investigation. In the event that it is established that the Insured or the Company, are not or were not entitled to such payments, the Insured or the Company will severally and according to their respective interests, repay those payments to the Insurer, and the Limit of Liability shall be reduced by such amounts until repaid to the Insurer.

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 Defence Costs or Legal Representation Expenses, the Insurer will temporarily waive prior consent as long as the Insurer's consent is obtained within fourteen days of the first of such Defence Costs or Legal Representation Expenses being incurred. The sub-limit of liability for all payments made during the aforementioned fourteen day period is 10% of the Limit of Liability.

For the avoidance of doubt, when advancing Defence Costs or Legal Representation Expenses, the Insurer will not rely on Exclusion 4.3 (Illegal Profits and/ or Deliberate Acts) until the conduct in question has been established by written admission, court judgment or any other final adjudication.

2.2 Bail Bond Costs, Crisis Costs and Public Relations Expenses

This Policy shall extend to include Bail Bond Costs, Crisis Costs and Public Relations Expenses subject to the applicable sub-limits stated in Item 6 in the Policy schedule.

2.3 Continuous Coverage

For the purpose of this clause 2.3 and this clause only, "We" shall extend to mean Berkley Insurance Company (trading as Berkley Insurance Australia) and W. R. Berkley Insurance (Europe) Limited (trading as W. R. Berkley Insurance Australia).

Notwithstanding Exclusion 4.6.3 (Prior Claims and Circumstances), cover is provided under this Policy for any Claim arising from any fact, circumstance, act, omission or claim which prior to the commencement of the Policy Period, the Insured or Company is aware may result in or could reasonably be expected to result in a Claim or Formal Investigation, and which could or should have been notified under any earlier policy with the Insurer, provided always that:

- 2.3.1 the Insurer has continuously and without interruption been the insurer of the Company and the Insureds for directors and officers liability since that date; and
- 2.3.2 cover provided under this extension shall be subject to the Insurer's discretion to apply the terms, conditions, exclusions and limitations of the earlier policy under which the relevant fact or circumstance could or should have been notified.

2.4 Estates, Heirs and Legal Representatives

This Policy shall extend to include any claim made against the estates, heirs, legal representatives or assigns of an Insured in the event of that person's death, incapacity, insolvency or bankruptcy, provided that the claim:

- 2.4.1 arises directly from a Claim made against the Insured which is covered by the Policy; and
- 2.4.2 is made solely by reason of their status as estates, heirs, legal representatives or assigns of an Insured in the event of that person's death, incapacity, insolvency or bankruptcy.

2.5 Extradition Proceeding

This Policy shall extend to include Bail Bond Costs, Crisis Costs and Public Relations Expenses, arising from Extradition Proceedings up to the amount of the sub-limit of liability for all payments under this extension specified in Item 7 of the Policy schedule.

In respect of Bail Bond Costs covered under this extension, the sub-limit of liability for all payments is in the aggregate with Bail Bond Costs covered under Extension 2.2 (Bail Bond Costs, Crisis Costs and Public Relations Expenses).

2.6 New Subsidiaries

If the Company acquires or creates any entity during the Policy Period so that such entity becomes a Subsidiary, then such Subsidiary and its Insureds shall be covered under this Policy for Claims in respect of Wrongful Acts committed after such entity became a Subsidiary, subject to the Policy's terms and conditions, unless such Subsidiary:

- 2.6.1 has its head office registered or domiciled in the United States of America or its territories; or
- 2.6.2 has any of its securities publicly traded on any stock exchange or market (including any over the counter market) in the United States of America or its territories; or
- 2.6.3 is a bank, savings and loan institution, mortgage lender, insurance company, reinsurance company, hedge fund, mutual fund, unit trust or investment or fund manager, venture capitalist, private equity firm, pension provider, superannuation provider or building society.

The Insurer may agree to include other acquired entities upon receiving full details of such acquired entity and making amendments to the Policy terms and conditions as necessary including charging an additional premium.

2.7 Non-Executive Directors' Additional Limit

Subject to the Non-Executive Directors' Additional Limit of Liability stated in Item 5 of the Policy schedule, the Insurer will pay to or on behalf of Non-Executive Directors only, Loss resulting from any Claim, provided that:

- 2.7.1 the Limit of Liability has been exhausted by payment of Loss; and
- 2.7.2 all other indemnification for Loss available to any Non-Executive Director through the Company or any Outside Entity, has been exhausted; and
- 2.7.3 the limits of liability of any and all policies operating in excess of this Policy have been exhausted by payment of Loss; and
- 2.7.4 any other policy entered into by or on behalf of the Non Executive Director, whether prior or current, which covers any part of that Loss is exhausted.

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

2.8 Non-Renewal Discovery Period

If the Insurer refuses to renew this Policy or the Company chooses not to renew this Policy, and there has been no notification made before the expiry of the Policy Period, the Company shall have the right to purchase, upon payment of the additional premium stated in Item 10.a of the Policy schedule, an extension of this Policy for the period described in Item 10.b. of the Policy schedule, for any Claim first made during such period for Wrongful Acts, or conduct leading to a Formal Investigation, committed or alleged to have been committed prior to the commencement of this non renewal discovery period, provided that:

- 2.8.1 The Insured or the Company does not effect directors and officers liability insurance or similar insurance with any other insurer, underwriter or similar entity; and
- 2.8.2 Written notice of the Company's election to purchase this discovery period and the additional premium specified in Item 10.a. of the Policy schedule are received by the Insurer within thirty days following expiry of the Policy Period stated in Item 3 of the schedule;
- 2.8.3 The Company shall not have the right to purchase a discovery period in the event of a Takeover; and
- 2.8.4 There is no separate or additional Limit of Liability for any Non-Renewal Discovery Period; and
- 2.8.5 the non-renewal discovery period is non-cancellable and the entire premium shall be fully earned at its commencement.

Cover under Extension 2.13 (Retired Directors and Officers Liability) is not available if this Non-Renewal Discovery Period is purchased.

Any discovery period purchased shall cease immediately upon a similar insurance policy being obtained, without any obligation upon the Insurer to return any portion of the premium.

2.9 Occupational Health & Safety Costs

Notwithstanding Exclusion 4.1 (Bodily Injury and/or Property Damage), this Policy shall extend to include any Defence Costs, or Legal Representation Expenses, arising from a Claim or Formal Investigation, in respect of any alleged breach of any occupational health and safety legislation, whether or not involving workplace manslaughter, first ordered or commissioned during the Policy Period.

2.10 Outside Directorship Liability

This Policy shall extend to include Loss for any Claim against an Insured who at the specific written request of the Company is a director, officer, trustee, governor or equivalent of any Outside Entity in their capacity as such, provided that:

- 2.10.1 the cover provided under this extension applies in excess of any other indemnification provided by the Outside Entity
- 2.10.2 the cover provided under this extension applies in excess of any directors and officers liability insurance in force for such Outside Entity

2.11 Pecuniary Penalties

This Policy shall extend to include Pecuniary Penalties connected to any Claim made against an Insured up to the amount of the sub-limit of liability specified in Item 8 of the Policy schedule.

2.12 Pollution Defence Costs

Notwithstanding Exclusion 4.5 (Pollution), this Policy shall extend to include Defence Costs, and Legal Representation Expenses, in respect of Pollution, up to the amount of the sub-limit of liability specified in Item 9 of the Policy schedule.

2.13 Retired Directors and Officers

If the Company does not renew or replace this Policy with any other policy affording directors and officers liability coverage and a Non-Renewal Discovery Period is not purchased, the Insurer shall provide an extension of this Policy for eighty four months from the end of the Policy Period to any director or officer who voluntarily retired from the Company during the Policy Period and the retirement was other than as a result of a Takeover, but only with respect to a Wrongful Act committed by such director or officer prior to their date of retirement.

2.14 Spousal Liability

This Policy shall extend to include any spouse or domestic partner (or the equivalent in any jurisdiction) of an Insured but only for a claim arising solely out of their status as such and only where such claim seeks damages from marital community property, jointly held property or property transferred from the Insured to the spouse or domestic partner, and where the damages arise directly from a Claim made against the Insured which is covered by the Policy

3. Definitions

In this Policy the words in capitals shall have the following meaning:

3.1 Bail Bond Costs

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

3.2 Claim

means:

- 3.2.1 any written demand for monetary damages or non-monetary relief;
 - 3.2.2 any civil or arbitration, mediation or alternative dispute resolution proceedings;
 - 3.2.3 any criminal proceedings;
 - 3.2.4 any formal administrative or regulatory proceedings commenced by the filing of a notice of charges, formal investigative order or similar document;
 - 3.2.5 any Securities claim;
- against an Insured for a Wrongful Act, or
- 3.2.6 any Formal Investigation;
 - 3.2.7 any Extradition Proceeding.

3.3 Company

means the organisation named in Item 2 of the Policy schedule and any Subsidiary.

3.4 Crisis Costs

means any reasonable and necessary professional fees, costs and expenses of any accredited counsellor or tax advisor retained by an Insured with the Insurer's prior written consent (such consent not to be unreasonably withheld) where:

- 3.4.1 there is implicit risk to such Insured's livelihood as a consequence of adverse publicity or media attention, and
- 3.4.2 there is an allegation of a Wrongful Act,
- 3.4.3 an Extradition Proceeding, or
- 3.4.4 a Formal Investigation.

3.5 Defence Costs

means the reasonable legal expenses and legal costs incurred by an Insured with the written consent of the Insurer (such consent not to be unreasonably

withheld) to defend or appeal a Claim and which the Insured is obligated to pay. This includes the cost of an appeal bond but without the obligation to apply for and furnish any such bond. Defence Costs are part of and not in addition to the Limit of Liability. Defence Costs does not include wages, salaries or other remuneration.

3.6 Employment Benefits

includes but is not limited to:

- 3.6.1 severance or redundancy payments or entitlements;
- 3.6.2 any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- 3.6.3 bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- 3.6.4 non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- 3.6.5 stock, shares, stock options, share options or any entitlement or right under any employee plan of any description, or participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- 3.6.6 payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event; or
- 3.6.7 any amount the Company pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

3.7 Employment Practices Breach

means any actual or alleged:

- 3.7.1 unfair or wrongful dismissal, termination or discharge of employment, either actual or constructive;
- 3.7.2 harassment including bullying; discrimination;
- 3.7.3 retaliation, including lockouts;
- 3.7.4 employment related misrepresentations to an employee or applicant for employment;
- 3.7.5 employment related humiliation, defamation or invasion of privacy, denial of natural justice;
- 3.7.6 wrongful failure to employ or promote;
- 3.7.7 wrongful deprivation of career opportunity;
- 3.7.8 failure to provide accurate references;
- 3.7.9 negligent evaluation or unfair discipline;
- 3.7.10 wrongful failure to grant tenure;
- 3.7.11 failure to comply with employment policies or procedures; or
- 3.7.12 breach of statutory, equitable or common law duty;

solely relating to any past, present or prospective employee of the Company or Outside Entity.

Employment Practices Breach does not include any actual or alleged unfair contract of employment.

3.8 Extradition Proceeding

means:

- 3.8.1 any request for extradition of any Insured, any warrant for arrest in respect of any Insured or other proceeding under the provisions of the Extradition Act 1988 (Cth); or
- 3.8.2 any associated appeal including but not limited to the pursuit of judicial review proceedings against the decision of the Attorney General or another appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); or
- 3.8.3 the equivalent of the above in any other jurisdiction.

3.9 Formal Investigation

means:

- 3.9.1 outside the United States of America or its respective territories, an official investigation, official examination or official inquiry including royal commission, in relation to the conduct of an Insured, or in relation to the business or activities of the Company for which the notice or process compelling attendance of an Insured is first served during the Policy Period. It is not necessary that a Wrongful Act be alleged against the Insured;

- 3.9.2 in the United States of America or its respective territories:

- a) any civil, criminal, administrative or regulatory investigation in relation to the business or activities of the Company or the conduct of an Insured for which notice or process compelling the attendance of an Insured is first served during the Policy Period, once such an Insured has been identified in writing by the investigating body as a person against whom civil, criminal, administrative or regulatory proceedings may be commenced by the service of a complaint or similar pleading, by the return of an indictment or similar document or by the receipt or filing of a notice of charges; or
- b) in the case of an investigation in relation to the business or activities of the Company by the United States Securities and Exchange Commission or a similar state authority or a Grand Jury, after the service of a subpoena upon an Insured.

Cover is only available in respect of Insuring Clause 1.3 (Legal Representation Expenses).

3.10 Insured

means a natural person who was, now is or becomes during the Policy Period:

- 3.10.1 a director, Officer, manager or trustee of the Company or the equivalent in any other jurisdiction;
- 3.10.2 an employee of the Company;
- 3.10.3 a de facto or shadow director in their capacity or solely by reason of their status as such;

Insured shall not include any auditor, trustee, receiver, receiver and manager, liquidator, administrator, mortgagee in possession or the like, or their respective employees.

3.11 Insurer

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

3.12 Legal Representation Expenses

means the reasonable legal costs and expenses (not including wages, salaries or other remuneration), for which an Insured is legally liable and which are incurred, with the prior consent of the Insurer (which shall not be unreasonably delayed or withheld), for legal representation at any legally compelled attendance at a Formal Investigation. Including but not limited to legal costs and expenses related to a raid or on-site visit to a Company by any official government body or authority, regulator,

governmental or administrative agency or any self-regulatory body in respect of such Formal Investigation.

3.13 Limit of Liability

means the aggregate limit of liability stated in Item 4. in the Policy schedule.

3.14 Loss

means:

- 3.14.1 damages, interest, settlements, compensation orders and judgments, including punitive damages not otherwise excluded;
- 3.14.2 Bail Bond Costs;
- 3.14.3 Pecuniary Penalties;
- 3.14.4 Defence Costs;
- 3.14.5 Public Relations Expenses;
- 3.14.6 Crisis Costs;
- 3.14.7 Legal Representation Expenses;

for which the Insured is legally liable resulting from a Claim.

loss does not include:

- a) fines and penalties, other than Pecuniary Penalties;
- b) taxes;
- c) punitive damages in respect of any Employment Practices Breach;
- d) the multiplied part of any multiple damages award;
- e) Employment Benefits;
- f) matters uninsurable under the law of Australia and New Zealand;
- g) amounts not covered due to Section 6.4 (Allocation); or
- h) costs and expenses related to any uncovered matter.

3.15 Non-Executive Director

means a natural person who is a director of the Company but is not also an employee of the Company and does not have day to day responsibility for the management of the Company.

3.16 Officer

means any natural person who:

- 3.16.1 is a company secretary; or
- 3.16.2 is concerned in, or takes part in, the management of the Company whether or not that person is a director; or
- 3.16.3 makes or participates in making, decisions that affect the whole or a substantial part of the business of the Company; or

3.16.4 in their role within the Company has the capacity to affect significantly the Company's financial standing; or

3.16.5 is a contractor who acts as a member of a committee duly elected or appointed by resolution of the Board of Directors of the Company to perform specific, as distinguished from general, directorial acts on behalf of the Company.

3.17 Outside Entity

means any:

- 3.17.1 non-profit organisation, trade association or registered charity under the laws of any jurisdiction, or
- 3.17.2 entity in which the Company has a 10% to 50% shareholding but which is not a Subsidiary; or
- 3.17.3 any entity listed in the outside entity endorsement (if any) attaching to and forming part of this Policy.

However, Outside Entity does not include any entity:

- 3.17.4 Whose head office is registered or domiciled in the United States of America or its territories, or
- 3.17.5 Which has any of its securities publicly traded on any stock exchange or market (including any over the counter market) in the United States of America or its territories, or
- 3.17.6 Which has negative net assets at the start of the Policy Period, or
- 3.17.7 Which is a bank, savings and loan institution, mortgage lender, insurance company, reinsurance company, hedge fund, mutual fund, unit trust or investment or fund manager, venture capitalist, private equity firm, pension provider or building society.

3.18 Pecuniary Penalties

means any penalty which an Insured is ordered to pay pursuant to the laws of and in the jurisdictions of Australia or New Zealand, provided the Insurer is not legally prohibited from paying such penalty.

3.19 Policy

means:

- 3.19.1 this insurance policy document;
- 3.19.2 any endorsements attaching to and forming part of this policy either at the commencement of the Policy Period or during the Policy Period; and
- 3.19.3 the schedule.

3.20 Policy Period

means the period stated in Item 3 of the Policy schedule.

3.21 Pollutant

means, but is not limited to, any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, nuclear or radioactive material, chemicals, any air emission, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, mould, noise, electric or magnetic or electromagnetic field, or waste (which includes, but is not limited to, material to be recycled, reconditioned or reclaimed).

3.22 Pollution

means the actual, alleged or threatened discharge, release, escape, disposal of, or exposure to any Pollutant, or any request, direction or order that the Insured or Company tests for, monitors, cleans up, removes, contains, treats, detoxifies, neutralises or in any way responds to or assesses the effect of any Pollutant, or any voluntary decision or omission to do so.

3.23 Public Relations Expenses

means the reasonable and necessary fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which the Insured may engage with the written consent of the Insurer, (such consent not to be unreasonably withheld) in order to:

- 3.23.1 prevent or limit adverse effects or negative publicity which it is anticipated may arise from any Claim, or
- 3.23.2 disseminate to the public any resolution of a Claim, including the findings of a final adjudication in favour of the Insured or Company.

3.24 Securities

means any security representing share capital, equity or debt instrument of the Company

3.25 Securities Claim

means a Claim made against an Insured that is brought:

- 3.25.1 by any person or entity arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any Securities of the Company, or
- 3.25.2 by a holder of Securities of the Company with respect to such holder's interest in Securities of the Company, or
- 3.25.3 derivatively on behalf of the Company by a holder of Securities of the Company.

3.26 Subsidiary

means any entity in respect of which the Company, at the commencement of the Policy Period:

- 3.26.1 controls the composition of the board of Directors, or
- 3.26.2 controls more than half the voting power, or
- 3.26.3 holds more than half of the issued share capital, or
- 3.26.4 any joint venture or entity over which the Company directly or indirectly exercises management control.

In relation to any Subsidiary that is sold, dissolved or otherwise disposed of prior to the expiration of the Policy Period, this Policy does not provide cover in respect of any Wrongful Act or conduct occurring after the sale, disposal or dissolution of such Subsidiary.

3.27 Takeover

means the:

- 3.27.1 acquisition of 50% (fifty percent) or more of the issued share capital of the Company by another entity or person, or group of entities or persons acting in concert, or
- 3.27.2 merger of the Company into another entity such that the Company is not the surviving entity, or
- 3.27.3 acquisition of the assets of the Company by another entity or person, or group of entities or persons acting in concert.

3.28 Wrongful Act

means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of trust, breach of duty, or Employment Practices Breach made outside of the United States of America or its territories, committed or attempted by an Insured in their capacity as such or by reason of their status as such.

4. Exclusions

The Insurer is not liable to pay any Loss:

4.1 Bodily Injury and/or Property Damage

arising from any Claim for any actual or alleged bodily injury, death, sickness, disease, emotional distress, mental anguish, injury, or damage to or destruction of any tangible property including loss of use.

This exclusion shall not apply to an Employment Practices Breach, nor shall it apply to Defence Costs, or Legal Representation Expenses, in respect of any alleged breach of occupation health and safety legislation.

4.2 ERISA

arising from any Claim directly or indirectly caused by, arising out of or in any way connected with any actual or alleged violation of the responsibilities, obligations or duties imposed under the Employee Retirement Income Security Act 1974 (ERISA) in the United States of America or its territories, or any similar provision of any statutory, civil or common law applicable to trustees, fiduciaries or administrators of any superannuation scheme, programme, pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained to provide benefits to employees.

4.3 Illegal Profits and/or Deliberate Acts

directly or indirectly caused by, arising out of or in any way connected with:

- 4.3.1 any Insured committing or permitting any criminal, dishonest, fraudulent or malicious act; or
- 4.3.2 any Insured committing or permitting any wilful breach of duty; or
- 4.3.3 any Insured or the Company gaining in fact any personal profit or advantage or receiving any remuneration to which they were not legally entitled; or
- 4.3.4 any Insured having been improperly involved in any securities transaction by using information that was not available to other sellers or purchasers of such securities.

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

4.4 Insured v Insured Claims

arising from any Claim brought by or on behalf of any Insured or the Company, however this exclusion shall not apply to any:

- 4.4.1 Claim instigated by a shareholder, or group of shareholders, of the Company without the solicitation, participation or assistance of any Insured or the Company;
- 4.4.2 Claim for an Employment Practice Breach;
- 4.4.3 Claim that is in the form of a cross claim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a Claim which is not otherwise excluded under this Policy;
- 4.4.4 Claim brought or maintained by a liquidator, administrative receiver or receiver either directly or derivatively on behalf of the Company without the solicitation, participation or assistance of any Insured or the Company;
- 4.4.5 Claim brought or maintained by any former director or officer of the Company;
- 4.4.6 Defence Costs; or
- 4.4.7 Claim instigated by a shareholder or group of shareholders of the Company without the solicitation, participation or assistance of the Insured or the Company.

4.5 Pollution

directly or indirectly caused by, arising out of or in any way connected with Pollution, however provided that such Claim is brought or maintained entirely outside of, and not subject to the laws of the United States of America or Canada or any territories or possessions thereof, this exclusion shall not apply to Pollution Defence Costs or any Claim instigated by any shareholder or group of shareholders of the Company whether in his/her own right or in the name of the Company without the solicitation, participation or assistance of the Insured or the Company.

4.6 Prior Claims and Circumstances

directly or indirectly caused by, arising out of or in any way connected with:

- 4.6.1 any Claim, investigation, litigation or proceeding threatened, intimated, in existence or commenced against the Company or Insureds before Policy Period, or

- 4.6.2 any 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 Company or Insureds before the commencement of the Policy Period, or
- 4.6.3 any Claim that arises out of any fact, circumstance, act, omission or claim which, prior to the commencement of the Policy Period, the Insured is aware may result in or could reasonably be expected to result in a Claim, or
- 4.6.4 any Claim, circumstance or any investigation of which notice has been given, or which prior to the commencement of the Policy Period, the Insured was aware may result in, or could reasonably be expected to result in, a Claim or investigation, under any policy existing or expired before or on the inception date of this Policy or which was included on the proposal form.

For the purpose of this exclusion, the term 'litigation or proceeding' shall include, but not be limited to, any civil or criminal proceeding as well as any administrative or regulatory proceeding or official investigation or arbitration or adjudication.

4.7 Professional Services

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged for any act, error or omission allegedly committed in connection with the provision of, or agreement to provide, professional services to a third party.

This Exclusion does not apply to an alleged failure of the Insured to supervise an employee of the Company.

4.8 SEC

directly or indirectly caused by, arising out of or in any way connected with the United States of America Securities Act of 1933, or the United States of America Securities Exchange Act of 1934, rules or regulations of the United States of America Securities Exchange Commission (SEC) under either or both Acts, similar securities laws or regulations in the United States of America or its territories.

5. Limit of Liability

5.1 Aggregate Limit of Liability

The Limit of Liability in the Policy schedule is the aggregate limit of the Insurer's liability for all Loss under this Policy, other than in respect of payments for Loss in accordance with Section 2.7 (Non-Executive Director's Additional Limit).

The Limit of Liability is not increased or reinstated when the Non-Renewal Discovery Period, if purchased, or Retired Directors and Officers cover, is in operation. Any cover under those Extensions is part of and not in addition to the Limit of Liability.

5.2 Sub-limits

Any sub-limit specified in this Policy shall be the Insurer's maximum aggregate liability under any cover which is subject to a sub-limit, irrespective of the number of claims, the amount claimed or the number of Insureds named in any Claim. Any sub-limit shall be part of and not in addition to the aggregate Limit of Liability shown in Item 4 of the Policy schedule.

5.3 Deductible

The Insurer shall only be liable to pay Loss in excess of the deductible amount stated in Item 12 of the Policy schedule which applies to each and every Claim. This deductible is to be borne by the Company and is not to be insured.

No deductible shall apply to any Loss where the Company is prevented by law or financial impairment from indemnifying the Insured.

6. Claims and Notice Provisions

6.1 Notice of Claim or Formal Investigation

The Insured and/or the Company shall, as a condition precedent to the Insurer's liability, give to the Insurer notice in writing of any Claim or Formal Investigation as soon as reasonably possible and in any event within 30 days of the end of the Policy Period.

Notice of any claim will be provided in writing to:

National Head of Claims
australiacclaims@berkleyinaus.com.au
Berkley Insurance Australia
PO Box Q296
QVB NSW 1230

6.2 Defence of Claims

It is the duty of the Insurer to defend any Claim notified under this Policy. It is the duty of the Insured, not the Insurer, to arrange representation at any Formal Investigation covered by this Policy. The Insurer, however, will have the right to effectively associate with any Insured in respect of any Formal Investigation.

It is a condition precedent to the Insurer's liability that in the event of a claim notification which might reasonably be expected to give rise to a Claim:

- 6.2.1 the Insured and the Company shall give the Insurer such information and co-operation as the Insurer may reasonably require;
- 6.2.2 that neither the Insured nor the Company shall admit liability for, or attempt to settle any Claim, or incur any Defence Costs or Legal Representation Expenses, without the prior written consent of the Insurer; and
- 6.2.3 that neither the Insured nor the Company shall take any action which will or might prejudice the Insurer with respect to any Claim or Loss covered or potentially covered by this policy.

6.3 Contest of Claims

- 6.3.1 The Insured shall not be required to contest any legal proceedings unless counsel (to be mutually agreed upon by the Insured and the Company and the Insurer) shall advise that such proceedings should be contested.
- 6.3.2 the Insurer shall be entitled to nominate a solicitor and, if appropriate a barrister, to represent the Insured.

6.4 Allocation

Where, between any Insured and any other person or the Company, any loss amount has been jointly or jointly and severally incurred, the Insurer's liability under this policy is limited to the proportion which represents a fair and equitable allocation between the Insured and those other persons or the Company, taking into account the relative legal and financial exposures of, and the relative benefits obtained by, the Insured Persons 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, the Insurer's liability is limited to the proportion which represents a fair and equitable allocation between any Company, the Insured and the Insurer, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

If the Insured and the Insurer 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 Law Society of the State or Territory in which this policy is issued.

6.5 Multiple Claims

Two or more Claims arising out of a Wrongful Act or a series of related Wrongful Acts will be treated as a single Claim. All such Claims will be treated as if first made at the time the earliest Claim was made. Any such Claims will be treated as a single Claim for the purpose of applying the Limit of Liability and deductible.

7. General Conditions

The following general conditions apply to this Policy

7.1 Territory

Unless otherwise stated within this Policy, cover shall apply to Claims made and Wrongful Acts committed worldwide.

7.2 Severability

No statements made, nor any information or knowledge possessed by an Insured when applying to the Insurer for this insurance, nor conduct of an Insured falling within Exclusion 4.3 (Illegal Profits and/or Deliberate Acts) shall be imputed by the Insurer to any other Insured.

7.3 Other Insurance and Non-Accumulation

To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover Loss to the extent that the amount of such Loss is in excess of any indemnity or cover available to the Insured in respect of that Loss under any other policy entered into by the Insured or the Company.

To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover Loss to the extent that the amount of such Loss is in excess of any indemnity or cover available to the Insured in respect of that Loss under any other policy effected on behalf of the Insured or under which the Insured is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the Limit of Liability provided in this Policy.

If such other insurance is provided by the Insurer, or any other member company, associate or affiliate of the Insurer and it covers a Loss covered by this Policy in respect of a Claim or Formal Investigation, the Limit of Liability under this Policy in respect of that Claim or Formal Investigation shall be reduced by any amount paid by the Insurer (or member company, associate or affiliate of the Insurer) under such other insurance.

7.4 Order of Payments

If the Insurer is liable to make any payment for Loss covered by the provisions of this Policy, then such payments under the Policy will be made in the following order:

7.4.1 First, payment of Loss for which cover is provided under Insuring Clauses 1.1 (Directors & Officers Liability) and 1.3.1 (Legal Representation Expenses) of this Policy

7.4.2 Second, and only after payment of Loss has been made pursuant to paragraph 7.4.1 above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the chief executive officer of the Company, either pay or withhold payment of such other Loss for which cover is provided under Insuring Clauses 1.2 and the reimbursable cover under 1.3.2 of this Policy.

Except as otherwise provided above, the Insurer may make payment in the order that the request for payments is received by the Insurer.

7.5 Assignment of Interest

Assignment of interest under this Policy shall not bind the Insurer unless the Insurer's consent to such assignment is endorsed to this Policy.

7.6 Takeover

If during the Policy Period a Takeover occurs the coverage under this Policy shall continue until the end of the Policy Period specified in Item 3 of the Policy schedule, but only with respect to Claims for conduct prior to the date of the Takeover.

7.7 Subrogation and Recovery

If the Insurer makes a payment under this policy, the Insurer is subrogated to the Insured's rights and/or the Company's rights.

Neither the Insured nor the Company shall do anything to prejudice the Insurer's ability to assert such subrogation rights.

7.8 Notices to The Company

Any notices to the Company under this Policy shall be provided to the Company at the last known address and to the Company's insurance agent or broker.

7.9 Changes

Notice to or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not

effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

7.10 Company Authorisation

With the exception of Extension 2.7 (Non-Executive Directors' Additional Limit), the Insured and the Company agree that the Company will act on behalf of all Insureds and the Company with respect to this Policy.

7.11 Interpretations

In this Policy:

- 7.11.1 descriptions in the headings are solely for convenience, and form no part of the terms and conditions of coverage, and
- 7.11.2 singular includes the plural and vice versa, and
- 7.11.3 references to specific legislation include amendments to, and re-enactments of, such legislation and similar legislation in any jurisdiction in which a Claim is made.

7.12 Governing Law and Jurisdiction

This Policy shall be governed by and interpreted in accordance with the laws of the Commonwealth of Australia and the State or Territory of the office of the Insurer in which the Policy was issued. The courts of that State or Territory have exclusive jurisdiction in relation to any disputes regarding the interpretation of this Policy.

7.13 Presumptive Indemnification

If the Company is permitted or required by law to indemnify, or is not prevented by law from indemnifying, an Insured for Loss but fails or refuses to, other than due to insolvency or bankruptcy, indemnify an Insured, then the Insurer shall pay such Loss on behalf of said Insured. In such event any applicable Deductible shall be paid by the Company to the Insurer.

7.14 Confidentiality

The Insured and the Company 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:

- 7.14.1 the Insurer provides written consent; or
- 7.14.2 disclosure is required by law.