



BERKSHIRE HATHAWAY SPECIALTY INSURANCE

Professional First Civil Liability Insurance Policy

Notices

This policy is issued by Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713), which is authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia, and which holds a financial strength rating of A++ from AM Best and AA+ from Standard & Poor's.

Duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), before you enter into a contract of insurance you have a duty to disclose to us, every matter you know (or you could reasonably be expected to know), to be a matter that is relevant to our decision whether to accept your risk, and if so, on what terms.

The duty of disclosure applies to every person to be covered under the insurance. It applies before you enter into a contract of insurance and before you renew, extend, vary or reinstate a contract of insurance.

The duty of disclosure does not however require you to tell us about a matter that diminishes the risk, that is of common knowledge, that we know (or ought to know), or in respect of which we have waived the duty of disclosure.

If you fail to comply with the duty of disclosure, or if you misrepresent the risk to be insured, we may be entitled to reduce our liability for a claim, we may cancel the policy, or if your non-disclosure or misrepresentation was fraudulent, we may be able to treat the policy as though it never existed.

Privacy

We, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding your privacy and the confidentiality of your personal information. We, and entities acting on our behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you. Without your personal information, we may not be able to issue insurance cover, administer your insurance or process your claim.

We will only use your personal information in accordance with the *Privacy Act 1988* (Cth) and for the purposes outlined above.

We may disclose your personal information to other companies in the Berkshire Hathaway group and other third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Hong Kong, the United Kingdom and the United States of America. Where such disclosure is made, we make all reasonable efforts to ensure that the arrangements we have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information we hold about you (including contacting us to correct or update the personal information we hold about you), or if you have a complaint about a breach of your privacy, please refer to our privacy policy available at <http://www.bhspecialty.com/privacy-policy.html>, or contact our Chief Risk Officer by email to australasia.privacy.compliance@bhspecialty.com. We reserve the right to refuse access under the grounds permitted by the *Privacy Act 1988* (Cth) and if you are seeking information on another person's behalf, we will require written authorisation from that individual.

Complaints

If you have a complaint or concern about our insurance products or services we provide, please contact your intermediary or your usual BHSI contact.

If you are not satisfied with our response, you may escalate your complaint by contacting complaints.australia@bhspecialty.com. Our internal dispute resolution process is free of charge and we will aim to respond to your escalated complaint within fifteen (15) business days.

Should you be dissatisfied with the outcome of our internal dispute resolution process, you may refer your complaint to the Financial Ombudsman Service. For further details, please visit www.fos.org.au.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice.

You can find further information about and download a copy of the Code from <http://codeofpractice.com.au>

Electronic delivery of policy documents

We will send your policy documents by email. If however you wish to receive your policy documents in hard copy, please tell us.

Claims made insurance

This insurance is written on a claims made basis. Cover is only available for claims made against you during the period of insurance.

However, under the *Insurance Contracts Act 1984* (Cth), we may not be entitled to deny indemnity merely because you notify us of a claim made against you after the expiry of the period of the insurance provided you gave us notice of the facts or circumstances of which you were aware that gave rise to the claim during the period of insurance.



BERKSHIRE HATHAWAY SPECIALTY INSURANCE

Professional First Civil Liability Insurance Policy

In consideration of payment of the **Premium** and in reliance on the written proposal, declaration and any other underwriting information provided, and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows.

1 COVER

All cover under this **Policy** is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

1.1 Civil Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any civil liability of the **Insured**.

1.2 Misleading or Deceptive Conduct

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for misleading and deceptive conduct at law or under the *Competition and Consumer Act 2010 (Cth)*, *Corporations Act 2001 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)* or similar provisions in the State's Fair Trading Acts.

1.3 Fraud and Dishonesty

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** brought about or contributed to by any fraudulent or dishonest conduct of an **Employee**, provided that such indemnity shall not be provided to any person committing or condoning, expressly or implicitly, such fraudulent or dishonest conduct.

1.4 Defamation

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for defamation committed by the **Insured**.

1.5 Joint Venture Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** arising from the **Insured's** involvement in any joint venture or partnership. No cover is provided to any other joint venture party or partner of the **Insured**.

1.6 Intellectual Property

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and **Trade Secrets**.

1.7 Vicarious Liability

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from **Claims** against both the **Insured** and contractors and/or consultants providing **Professional Services** on behalf of the **Insured**. Cover will not extend to the contractor and/or consultant who committed the **Wrongful Act**, except to the extent provided for in the "*Contractors / Consultants*" Optional Extension.

1.8 Continuous Cover

Notwithstanding the “*Prior Claims*” Exclusion, in the event of a **Claim**, or a circumstance that may reasonably have been expected by any **Insured** to give rise to a **Claim**, which should have been notified to the **Insurer** under any earlier policy, the **Insurer** will treat such **Claim** or circumstance as though it had been properly notified to the **Insurer** during the **Policy Period** provided always that:

- a) the **Insured** first became aware of the **Claim** or circumstances that might give rise to the **Claim** after the **Continuity Date**; and
- b) the cover provided by this clause will be subject to the terms of the policy in force when the **Insured** first became aware of such circumstances.

1.9 Automatic Reinstatement

If a **Claim** or **Claims** erode the **Limit of Liability** under this **Policy**, the **Insurer** agrees to reinstate the **Limit of Liability** to the extent of the eroded amount, provided always that the **Insurer's** total amount payable under this **Policy** shall not exceed:

- a) the **Limit of Liability** in respect of any one **Claim**, or related **Claims**; or
- b) twice the **Limit of Liability** in respect of all **Claims** during the **Policy Period**.

1.10 Defence Costs

The **Insurer** will pay on behalf of the **Insured** **Defence Costs** incurred in the defence and/or settlement of any **Claim**.

EXTENSIONS

1.11 Public Relations Costs

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** to engage a public relations consultant or crisis management consultant to protect the **Insured's** professional reputation in connection with an actual or potential **Claim**, provided always that:

- a) such reasonable fees, costs and expenses arise as a result of a **Claim** first made against the **Insured** during the **Policy Period**; and
- b) the **Insurer** has given its prior written consent to the incurring of such fees, costs and expenses, which shall not be unreasonably withheld or delayed; and
- c) no admission of liability is made by the **Insured**.

This Extension is subject to an aggregate **Sub-limit of liability** as specified in the Schedule.

1.12 Mitigation Costs

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** as a result of action taken by the **Insured** to mitigate an actual or potential **Claim**, provided always that:

- a) such reasonable fees, costs and expenses arise as a result of an actual or potential **Claim** against the **Insured** during the **Policy Period**; and
- b) the **Insurer** has given its prior written consent to the incurring of such fees, costs and expenses, which shall not be unreasonably withheld or delayed; and

- c) no admission of liability is made by the **Insured**.

This Extension is subject to an aggregate **Sub-limit of liability** as specified in the Schedule.

1.13 Quasi-Judicial Costs

In relation to any complaint about or investigation into the **Insured** in relation to **Professional Services** by or to a professional, regulatory or statutory body which has jurisdiction to investigate and determine an outcome for the complaint or investigation, the **Insurer** will pay on behalf of the **Insured**:

- a) all amounts payable by the **Insured** under orders or determinations of compensation made by the body; and
- b) any **Defence Costs** in respect of the complaint or investigation.

This Extension is subject to an aggregate **Sub-limit of liability** as specified in the Schedule.

1.14 Court Attendance Costs

The **Insurer** will pay the **Insured** for the cost of attendance for any person described in (i) and (ii) below who attends court as a witness in connection with a **Claim** notified to the **Insurer** and which the **Insurer** has confirmed is covered under this **Policy**:

- a) for any principal, partner or director of the **Policyholder** or a **Subsidiary**: \$500 per day
- b) for any **Employee**: \$250 per day

Any payment made under this Extension shall be deemed to be a payment of **Defence Costs**. No **Retention** shall apply to this clause.

1.15 Lost Documents

The **Insurer** will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred by the **Insured** in replacing or restoring **Documents** for which an **Insured** is legally responsible and that have been destroyed, damaged, lost or mislaid provided always that:

- a) the **Documents** were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of **Professional Services**; and
- b) the **Insurer** shall not be liable to make any payment arising out of wear, tear, gradual deterioration, moth or vermin.

This Extension is subject to an aggregate **Sub-limit of liability** as specified in the Schedule. No **Retention** shall apply to this clause.

1.16 Extended Reporting Period

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of **Premium**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice of any **Claim** first made against the **Insured** during the **Policy Period**. This extended reporting period shall not apply if this **Policy** has been replaced by substantially similar cover.

OPTIONAL EXTENSIONS

1.17 Breach of Contract

The **Insurer** will pay on behalf of the **Insured** all **Damages** resulting from any **Claim** alleging breach of contract.

1.18 Fidelity

The **Insurer** will pay the **Insured** for **Direct Financial Loss** due to the dishonest or fraudulent acts of an **Employee** (acting alone or in collusion with others) with the principal intent to cause the **Insured** to sustain a **Direct Financial Loss** and that results in the **Employee** making an improper financial gain for themselves or for any other individual or entity intended by the **Employee** to receive such gain, provided always that:

- a) the dishonest or fraudulent acts of an **Employee** are committed after the **Continuity Date**; and
- b) such dishonest or fraudulent acts are **Discovered** during the **Policy Period** and are reported to the **Insurer** as required by this **Policy**.

This Optional Extension is subject to an aggregate **Sub-limit of liability** as specified in the Schedule.

1.19 Partners / Principals Previous Business

To the extent that any principal, partner or director of the **Policyholder** has a personal liability for professional services rendered prior to becoming a principal, partner or director of the **Policyholder** which are the same as those specified in this **Policy**, **Professional Services** shall also mean those previously rendered professional services of such principal, partner or director.

1.20 Contractors / Consultants

The **Insurer** will indemnify any natural person who is a past or present contractor or consultant of the **Insured** against civil liability for compensation and costs and expenses in respect of any written demand or civil or administrative proceeding first made against such contractor or consultant and notified to the **Insurer** during the **Policy Period** resulting from the professional services provided by the contractor or consultant on behalf of the **Policyholder** which are the same as those specified in this **Policy**. Provided that at the time of any alleged wrongdoing by such contractor or consultant giving rise to the demand or proceeding, such contractor or consultant:

- a) had entered into a contract for services with the Insured; and
- b) was under the direct control and supervision of the Insured.

Cover under this Optional Extension for such contractor or consultant shall be subject to all the terms of the **Policy** as if the contractor or consultant were an **Insured**.

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DEFINITIONS

2.1 Claim means:

- a) any written demand; or
 - b) civil or administrative proceeding;
- that seeks **Damages** as a result of a **Wrongful Act**.

2.2 **Continuity Date** means:

the date specified as such in the Schedule.

2.3 **Damages** means:

any amount that an **Insured** shall be legally liable to pay in respect of judgments against an **Insured**, or settlements which conform with the consent requirements set out in Section 4 of the **Policy**.

2.4 **Defence Costs** means:

reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with the **Insurer's** prior approval, in the investigation, defence, adjustment, settlement or appeal of any **Claim**.

Defence Costs shall not mean any internal or overhead expenses of any **Insured** or the cost of any **Insured's** time, except as provided for under the "*Court Attendance Costs*" Extension.

2.5 **Direct Financial Loss** means:

means direct financial loss caused by the loss of **Money** or **Securities** owned by the **Policyholder** or any **Subsidiary**.

Direct Financial Loss does not include:

- a) wages, salaries or other remuneration benefits paid by the **Policyholder** or any **Subsidiary** to its **Employees**, partners, principals or directors;
- b) complete or partial non-payment or default under any credit arrangement; or
- c) any costs, fees or other expenses incurred by the **Insured** in prosecuting or defending any demand, claim or legal proceeding resulting from a **Direct Financial Loss** which is covered under this **Policy**.

2.6 **Discovered** means:

when any of the **Policyholder's** or a **Subsidiary's** partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with an **Employee** who has or is attempting to commit a fraudulent or dishonest act) first becomes aware of any facts which would cause a reasonable person to assume that a **Direct Financial Loss** which may be covered under this **Policy** has been or is likely to be incurred, even though the exact amount or details of the **Direct Financial Loss** are not known at the time the person first became aware of such facts. The first **Discovery** constitutes **Discovery** by each and every **Insured**.

2.7 **Documents** means:

all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

2.8 **Employee** means:

any natural person who is or has been expressly engaged as an employee under a contract of employment with the **Insured**.

Employee shall not mean any:

- a) principal, partner or director; or
- b) temporary contract labour, self-employed person or labour only sub-contractor.

2.9 **Family Member** means:

- a) any spouse, domestic partner or companion; or
- b) any parent or parent of the spouse; or
- c) any sibling or child;

of the **Insured**.

2.10 **Insured** means:

- a) the Policyholder or any Subsidiary;
- b) any natural person, who is or has been a principal, partner or director of the Policyholder or any Subsidiary;
- c) any Employee; and
- d) any temporary contract labour, self-employed person or labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the Policyholder or any Subsidiary;

but only when providing **Professional Services** in the foregoing capacities.

This **Policy** also covers any **Claim** made against the:

- a) estates, heirs, legal representatives or assigns of a natural person **Insured** who is deceased; or
- b) the legal representatives or assigns of a natural person **Insured** who is incompetent, insolvent or bankrupt.

Such coverage is afforded only to the extent such **Claim**, if made against such **Insured**, would have been covered by this **Policy** in the absence of such **Insured's** death, incompetency, insolvency or bankruptcy.

2.11 **Insurer** means Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713)

2.12 **Limit of Liability** means:

the amount specified in the Schedule.

2.13 **Money** means:

local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.

2.14 **Policy** means:

this policy wording, the Schedule, the proposal and any endorsement attaching to and forming part of the policy either at commencement or at any time during the **Policy Period**.

2.15 **Policy Period** means:

the period of time specified in the Schedule unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation.

2.16 **Policyholder** means:

the entity or natural person specified as such in the Schedule.

2.17 **Pollutants** means but is not limited to:

any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, asbestos fibres or derivatives of asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. "*Waste*" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

2.18 **Premium** means:

the amounts specified as such in the Schedule and any premium adjustment amount reflected in any endorsement to this **Policy**.

2.19 **Professional Services** means:

the advice and services of the **Policyholder** or any **Subsidiary** as specified in the Schedule.

2.20 **Property Damage** means:

damage to or loss of or destruction of tangible property or loss of use thereof.

2.21 **Retention** means:

the amount specified in the Schedule.

2.22 **Retroactive Date** means:

the date specified in the Schedule.

2.23 **Securities** means:

any negotiable or non-negotiable instruments or contracts representing **Money** or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

2.24 **Sub-limit of liability** means:

the amount specified in the Schedule.

2.25 **Subsidiary** means:

companies in which the **Policyholder**, either directly or indirectly:

- a) controls the composition of the Board of Directors;
- b) controls more than half of the voting power; or
- c) holds more than half of their issued share capital.

For any **Subsidiary**, cover under this **Policy** shall only apply while such entity is or was a **Subsidiary** of the **Policyholder**.

2.26 **Trade Secrets** means:

any information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

2.27 **Wrongful Act** means:

- a) a breach of duty, act, error, omission, misstatement or breach of confidentiality;
- b) any misleading or deceptive conduct;
- c) any infringement of intellectual property rights;
- d) libel or slander;
- e) any destruction, damage to, loss, erasure or mislaying of **Documents**; or
- f) any fraudulent or dishonest conduct;

committed solely in the performance of or failure to perform **Professional Services**.

3 **EXCLUSIONS**

The **Insurer** shall not be liable to make any payment in respect to any **Claim**:

3.1 **Anti-competitive conduct**

arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

3.2 **Bodily Injury/Property Damage**

arising out of, based upon or attributable to physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury or **Property Damage** unless arising out of an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**.

3.3 **Fines & Penalties**

for, arising out of, based upon or attributable to any taxes, fines or penalties, or liquidated, aggravated, multiple, punitive or exemplary damages.

This Exclusion shall not apply to the cover provided under the *"Quasi-Judicial Costs"* Extension.

3.4 **Fraud & Dishonesty**

arising out of, based upon or attributable to any act which a court, tribunal or arbitrator finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent act; and in such event, the **Insured** shall reimburse the **Insurer** for all sums paid in connection with such **Claim**.

This Exclusion shall not apply to *"Fraud and Dishonesty"* Cover or the *"Fidelity"* Optional Extension.

3.5 **Insolvency**

arising out of, based upon or attributable to the actual or alleged insolvency, administration or receivership of the **Insured**.

3.6 **Intentional Acts**

arising out of, based upon or attributable to any deliberate or reckless **Wrongful Act**.

3.7 **Liability assumed**

arising out of, based upon or attributable to any:

- a) liability or other obligation assumed or accepted by an **Insured** under any contract or agreement, except to the extent that such liability would have attached to the **Insured** in the absence of such contract or agreement; or
- b) guarantee or warranty.

This Exclusion shall not apply to the "*Breach of Contract*" Optional Extension.

3.8 **Patents – Trade Secrets**

arising out of, based upon or attributable to the actual or alleged infringement of, or misappropriation of patents or **Trade Secrets**.

3.9 **Pollution**

arising out of, based upon or attributable to:

- a) the actual, alleged or threatened presence, discharge, disburse or, release, migration or escape of **Pollutants**; or
- b) any direction, request or effort to:
 - i) test for, monitor, clean up, remove, contain, treat detoxify or neutralise **Pollutants**; or
 - ii) respond to or assess the effects of **Pollutants**.

3.10 **Prior Claims**

- a) made prior to or pending at the inception of this **Policy**;
- b) arising out of, based upon or attributable to any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**, that is known to the **Insured** prior to inception of the **Policy**; or
- c) derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of the **Policy**.

3.11 **Product Liability**

arising from or in connection with the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the **Insured**, or the failure of such goods to perform in any way.

3.12 **Retroactive Date**

arising out of, based upon or attributable to **Professional Services** provided prior the **Retroactive Date**.

3.13 **Related Entities**

brought or maintained by or on behalf of:

- a) any **Insured**, or any associated entity (whether incorporated or not) of the **Insured**;

- b) any person who, at the time of the **Wrongful Act** giving rise to the **Claim**, is a **Family Member**; or
- c) any person, firm, company or entity:
 - i) operated or controlled by any **Insured**;
 - ii) operated or controlled by any **Employee**, partner, nominee or trustee of any **Insured**;
 - iii) in which any **Insured** has a direct or indirect financial interest (a shareholding of less than 5% in a publically listed company shall not constitute a financial interest); or
 - iv) advised or induced by the **Insured** to invest in or lend money to any person, firm, company or entity referred to in any of a), b) or c) above or to the **Insured**.

For the purpose of this Exclusion, the term **Insured** shall include both the **Insured** and any **Family Member**.

3.14 **Trade Debts**

arising out of, based upon or attributable to any trading debt incurred by an **Insured**.

3.15 **USA/Canada**

made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions.

3.16 **War/Terrorism**

arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any political or terrorist organisation.

For the Fidelity Optional Extension only, this Policy shall not cover:

3.17 **Confidential Information**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with the accessing and dissemination of, any confidential information including, but not limited to, **Trade Secrets**, computer programs, customer information, patents, trademarks, copyrights or processing methods.

3.18 **Consequential Loss**

any indirect or consequential loss of any nature, including but not limited to any loss of income such as interest and dividends not realised by the **Policyholder** or any **Subsidiary** or any other person or organisation, resulting from a **Direct Financial Loss** which is covered under this **Policy**.

3.19 **Director / Principal / Partner Dishonesty**

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest activities involving collusion with or complicity of a partner, principal or director of the **Policyholder** or any **Subsidiary**.

3.20 Dual Controls

any **Direct Financial Loss** in connection with any dishonest or fraudulent acts arising out of, based upon or attributable to the **Insured's** failing to ensure that at least one principal, partner or director and one authorised signatory sign any cheques or funds transfer instructions.

3.21 Extortion or Kidnap and Ransom

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way with connected with any extortion or kidnap and ransom.

3.22 Geographical Limits

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest acts outside of Australia or New Zealand.

3.23 Loss Establishment Costs

any fees, costs or other expenses incurred by the **Insured** in establishing the existence or amount of any **Direct Financial Loss** covered under this **Policy**.

3.24 Loss Sustained After Knowledge

any **Direct Financial Loss** arising out of, based upon, attributable to or in any way connected with any **Employee** from the time the **Policyholder's**, or a **Subsidiary's** partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with such **Employee** for the purpose of committing a fraudulent or dishonest act) had actual knowledge that the **Employee** had committed or was suspected of having committed a fraudulent or dishonest act.

4

CLAIMS CONDITIONS

4.1 Co-operation

The **Insured** will at its own cost:

- a) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion and exercise of any indemnification and/or contribution rights;
- b) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss under this **Policy**;
- c) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any loss or determine the **Insurer's** liability under this **Policy**.

4.2 Defence/Settlement/Allocation

- a) The **Insured** (and any person, firm, or company acting for or on the **Insured's** behalf) shall not incur any **Defence Costs**, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim**, or other matter for which coverage is provided under this **Policy** without the **Insurer's** prior written consent, such consent not to be unreasonably withheld or delayed.

- b) The **Insured** shall defend any **Claim** brought against the **Insured**; however the **Insurer** shall have the right but not the duty to take over the investigation, defence and settlement of any **Claim**, and the **Insurer** shall have full discretion in the handling and resolution thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**).
- c) The **Insured** shall not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Senior Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of such agreement to be determined by the President of the relevant State Law Society), advises that such proceedings can be contested with a reasonable prospect of success. The costs of such advice shall be borne by the **Insurer**.
- d) If the **Insured** does not agree with the decision by the **Insurers** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Insurer** will not exceed the amount for which the **Claim** could have been settled in the opinion of a Senior Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of such agreement to be determined by the President of the relevant State Law Society). The costs of such advice shall be borne by the **Insurer**.

The **Insurer** shall pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this clause of the **Policy**, and shall pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of the **Claim** shall then be at an end and the **Insurer** will not be obliged to pay for any other or further amounts in respect of the **Claim** under the **Policy**.

- e) In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of **Damages** and **Defence Costs** covered under this **Policy**, taking into account the relative legal and financial exposures.

4.3 **Fraudulent Claims**

If any **Insured** claims cover for any payment under this **Policy** knowing such claim to be false or fraudulent as regards the amounts or otherwise, such claim shall be entirely excluded under the **Policy**, and the **Insurer** shall have the right to cancel the **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)*.

4.4 **Notification of Claims**

The **Insured** shall give written notice to the **Insurer** as soon as practicable, but no later than the end of the **Policy Period**:

- a) of any **Claim** first made against the **Insured** or of a **Direct Financial Loss**;
- b) of the receipt of notice from any person of an intention to make a **Claim** against any **Insured**;
- c) of any circumstance which may reasonably be expected by any **Insured** to give rise to a **Claim**.

If the **Insured** notifies a **Direct Financial Loss** to the **Insurer**, the **Insured** must also, as soon as practicable, provide the **Insurer** with:

- a) affirmative proof of the **Direct Financial Loss**; and
- b) all requested information and documents and co-operation in all matters pertaining to the investigation of the **Direct Financial Loss**.

All notifications must be in writing and addressed via the **Insured's** insurance broker or to the **Insurer** for the attention of the Claims Manager.

4.5 **Related Claims**

Any **Claim** or **Claims** arising out of, based upon or attributable to:

- a) the same acts, errors or omissions; or
- b) a series of related acts, errors or omissions; or
- c) the same matter or transaction;

shall be considered a single **Claim** for the purposes of this **Policy** and a single **Retention** shall be payable.

All such **Claims** shall be considered first made at the earliest time that any such **Claim** is first made against the **Insured**.

Any **Direct Financial Loss** resulting from a series of continuous, repeated or related fraudulent or dishonest acts shall be considered a single **Direct Financial Loss**.

5 **GENERAL CONDITIONS**

5.1 **Authorisation**

The **Policyholder** shall act as agent on behalf of all **Insureds** with respect to all matters under this **Policy** including:

- a) the giving and receiving of all correspondence regarding this **Policy**;
- b) the giving of notice of any **Claim** or other matter;
- c) the sending or receiving of notice of cancellation;
- d) the payment of the **Premium**; and
- e) the receipt and acceptance of any endorsements attaching to and forming part of this **Policy**.

5.2 **Cancellation**

- a) The **Insured** may cancel the **Policy** at any time by notifying the **Insurer** in writing. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the **Premium**. Payment of unearned **Premium** by the **Insurer** shall be made as soon as practicable to the **Insured** but will not change the effective date of cancellation of the **Policy**.
- b) The **Insurer** may cancel the **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)*. In such case, the **Insurer** shall be entitled to retain a pro-rata proportion of the **Premium**. Payment of unearned **Premium** by the **Insurer** shall be made as soon as practicable to the **Insured** but will not change the effective date of cancellation of the **Policy**.

5.3 Confidentiality

The **Insured** shall not disclose to any third party any of the terms of this **Policy** or the amount of the **Premium** except to the extent that they are required by law or they receive prior written consent from the **Insurer** to make such disclosure.

5.4 Retention

The **Insurer** shall only pay for the amount of any **Claim** or **Direct Financial Loss** in excess of the **Retention**. For the avoidance of doubt, the **Retention** applies to all amounts payable under this **Policy**, including **Defence Costs**, unless expressly stated otherwise. The **Retention** is to be borne by the **Insured** and shall remain uninsured.

5.5 Entire Agreement

This **Policy** constitutes the entire agreement between the parties. The terms, conditions and limitations of this **Policy** can be waived or changed only by written endorsement to this **Policy**.

5.6 Jurisdiction

This **Policy** shall be governed by the laws of Australia whose Courts shall have exclusive jurisdiction in any dispute arising hereunder.

Where legally permissible and subject to the USA/Canada Exclusion, this **Policy** shall apply to any **Claim** made against any **Insured** anywhere in the world.

5.7 Limit of Liability

The total amount payable by the **Insurer** under this **Policy** shall not exceed the applicable **Limit of Liability**. **Sub-Limits of liability**, **Defence Costs** and any amounts specified in the Cover, Extensions and Optional Extension clauses are part of and not payable in addition to the **Limit of Liability**. The inclusion of more than one **Insured** under this **Policy** does not increase the total amount payable by the **Insurer** under this **Policy**.

5.8 Plurals, Headings and Titles

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this **Policy** words and their grammatical variations in bold typeface have the special meaning as set out in this **Policy**.

5.9 Sanctions

This **Policy** does not provide any cover and the **Insurer** will not be liable to pay any amount or provide any benefit thereunder to the extent that the provision of such cover, payment of such amount or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

5.10 Severability

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. That written proposal for coverage shall be construed as a separate proposal form individually submitted for each **Insured**. No state of mind or knowledge possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining entitlement to coverage unless the relevant **Policyholder** or **Subsidiary** is a company with a sole director, in which case the knowledge of the sole director shall be imputed to the **Policyholder** or **Subsidiary**.

5.11 Subrogation

If any payment is to be made under this **Policy** in respect of a **Claim** or **Direct Financial Loss**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for the loss suffered. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment under the **Policy** shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by serious or wilful misconduct of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights in this clause.