



PrivateEdge

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About AIG

This insurance is issued by
AIG Australia Limited
ABN 93 004 727 753 AFSL 381686

About the policy

Your policy is made up of this document, the Schedule and any Endorsements and they should all be read as one document. Your policy is a legal contract between you and us.

If you think that any details contained in these documents are not correct or if you need to change anything, you should ask your insurance intermediary to tell us.

You are only insured for those policy Sections that are shown as 'Yes' under 'Section Insured' in the Schedule.

There are specific conditions, specific exclusions and specific definitions that only apply to a specific policy Section. In addition, there are general conditions, general exclusions, general claims conditions and general definitions that are part of this policy and apply to each policy Section.

Copyright

The content of this policy, including but not limited to the text and images herein, and their arrangement, is the copyright property of AIG. All rights reserved. AIG hereby authorises you to copy and display the content herein, but only in connection with AIG business. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to AIG; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this policy without the prior written permission of AIG. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of AIG or of any third party.

Important Notice

Claims-made and Notified Insurance

This policy contains coverage on a *claims-made and notified* basis. This means that this policy only covers Claims (as defined) first made against you during the Policy Period (as defined) and notified to the insurer in writing during the Policy Period. This policy does not provide cover for any Claims made against you during the Policy Period if at any time prior to the commencement of the Policy Period you became aware of facts which might give rise to those Claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where you gave notice in writing to the insurer of facts that might give rise to a Claim against you as soon as was reasonably practicable after you became aware of those facts but during the Policy Period, the insurer cannot refuse to pay a Claim which arises out of those facts, when made, because it was made after the Policy Period had expired.

This policy does not cover Claims arising out of, based upon or attributable to any:

- (a) facts alleged or the same or related acts, errors or omissions alleged or contained in any Claim which has or should have been notified or in any circumstances of which notice has or should have been given under any policy of which this policy is a renewal or replacement or which it may succeed in time; or
- (b) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration or adjudication as of the Continuity Date (as defined), or alleging or deriving from the same or essentially the same facts as alleged in such actions.

Your Duty of Disclosure

Before you enter into a contract of insurance with the insurer, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require you to disclose a matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that the insurer knows or, in the ordinary course of business, ought to know;
- as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

Privacy

AIG has adopted the National Privacy Principles. The National Privacy Principles apply to any personal information collected by AIG.

Purpose of collection

AIG collects personal information about you for the purposes of assessing your application for insurance and administering your policy. Failure to provide relevant personal information may result in AIG not being able to administer your policy, process any claim under your policy or you may breach your duty of disclosure.

Disclosure

In the course of administering your policy AIG may disclose your information to:

- an entity to which AIG is related either in the Commonwealth of Australia or overseas;
- contractors or third party providers providing services related to the administration of your policy;
- banks and financial institutions for the purpose of processing your application for insurance and obtaining policy payments;
- in the event of a claim, assessors, lawyers, third party administrators, emergency providers and medical providers; and
- third party service providers to enable the insurer to advise you of AIG insurance products or services.

AIG will only disclose your personal information to these parties for the primary purpose for which it was collected or to enable AIG to advise you of our insurance products or services. In some circumstances AIG is entitled to disclose your personal information to third parties without your authorisation such as law enforcement agencies or government authorities.

Access to your information

You may gain access to your information by submitting a written request to AIG. In some circumstances AIG may not permit access to your personal information. Circumstances where access may be denied include where it would compromise the privacy of other individuals, or where it would be unlawful.

AIG has also established an internal dispute resolution process for handling customer complaints and an access and correction procedure. Both procedures are generally free of charge however AIG reserves the right to charge for access requests in limited circumstances.

If you feel you have a complaint about AIG information privacy principles, require assistance in lodging a privacy complaint or you wish to gain access to your information, you may write to:

The Privacy Manager
AIG
Level 12, 717 Bourke Street
Docklands Vic 3008
Email: Australia.privacy.manager@aig.com

Your complaint will be reviewed and you will be provided with a written response. If it cannot be resolved, your complaint will be referred to the insurer Internal Disputes Resolution Committee who will respond within 15 business days. In either case the matter will be reviewed by a person or persons with appropriate authority to deal with the complaint. Should your complaint not be resolved by AIG internal dispute resolution process, you may take your complaint to the Privacy Commissioner for review of the determination.

Dispute Resolution Process

We are committed to handling any complaints about our products or services efficiently and fairly.

If you have a complaint:

- contact your insurance intermediary and they may raise it with us;
- if your complaint is not satisfactorily resolved you may request that your matter be reviewed by management by writing to:
The Compliance Manager
AIG
Level 12, 717 Bourke Street
Docklands Vic 3008
- if you are still unhappy, you may request that the matter be reviewed by our Internal Dispute Resolution Committee. We will respond to you with the Committee's findings within 15 business days.
- if you are not satisfied with the finding of the Committee, you may be able to take your matter to the insurance industry's independent dispute resolution body. This external dispute resolution body can make decisions with which we are obliged to comply.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

Policy Section 1 - Management Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Covers

1. *Individuals*

The **Insurer** shall pay the **Loss** of each **Manager** arising from **Management Liability**, except to the extent that the **Manager** has been indemnified by the **Company** for such **Loss**.

2. *Outside Entity Directors*

The **Insurer** shall pay the **Loss** of each **Outside Entity Director** arising from **Management Liability**, except to the extent that the **Outside Entity Director** has been indemnified for such **Loss**.

3. *Company Reimbursement*

The **Insurer** shall reimburse or pay on behalf of a **Company** any **Loss** for which it has indemnified a **Manager** arising from **Management Liability**.

4. *Reinstatement Limit*

If the Schedule specifies an 'Aggregate Limit of Liability' for all policy Sections, the **Insurer** shall pay a separate **Reinstatement Limit** on behalf of each of the **Policyholder's Board Directors** for any **Loss** that is not indemnified by the **Company** when the original **Limit of Liability** has been exhausted. Cover shall only apply to **Loss** that is not a related **Claim** or circumstance as specified in General Terms and Conditions Claims Condition 3 'Related Claims and Circumstances'.

Extensions

1. *Assets and Liberty Costs*

The **Insurer** shall pay:

- (i) any **Bail Bond and Civil Bond Premium**;
- (ii) **Prosecution Costs**; and
- (iii) the reasonable fees, costs and expenses incurred by any **Insured Person** arising from any **Asset and Liberty Proceeding**.

2. *Insured Person Statutory Liability*

The **Insurer** shall pay up, to an aggregate amount of \$250,000, the **Statutory Liability** of any **Insured Person**. This Extension shall not apply if Policy Section 6 - Statutory Liability is shown as 'Yes' under 'Section Insured' in the Schedule.

3. *Investigations*

The **Insurer** shall pay the **Investigation Costs** of each **Insured Person** arising from an **Investigation**.

4. *Occupational Health & Safety*

The **Insurer** shall pay the **Defence Costs** and **Investigation Costs** of any **Insured Person** arising from an **Occupational Health and Safety Incident**.

5. *Public Relations Expenses*

The **Insurer** shall pay, up to an aggregate amount of \$100,000, for reasonable fees, costs and expenses of **Public Relations Consultants** to provide **Public Relations Services** in connection with a covered **Claim**, **Critical Regulatory Event** or **Investigation**, where such **Public Relations Expenses** are not otherwise specifically covered elsewhere in this policy.

Extensions (continued)

6. **Extradition Proceedings**

The **Insurer** shall pay:

- (i) the reasonable fees, costs and expenses incurred by any **Insured Person** arising from any extradition proceeding; and
- (ii) up to an aggregate amount of \$100,000, for the reasonable fees, costs and expenses incurred by any **Insured Person** for each of (a) and (b) below:
 - (a) an accredited counsellor or tax advisor retained by an **Insured Person** approved by the **Insurer**, in extradition proceedings brought against such **Insured Person**; or
 - (b) **Public Relations Consultants** to provide **Public Relations Services** in extradition proceedings.

7. **Run-off for Retired Insured Persons**

The **Insurer** will provide:

- (i) an unlimited **Discovery Period** for any **Manager**; or
- (ii) a **Discovery Period** of twelve years for any **Superannuation Trustee**;

who retires or resigns prior to or during the **Policy Period**, other than by reason of a **Transaction**, and provided that:

- (a) the cover purchased under this policy is not renewed or replaced; or
- (b) where the cover purchased under this policy is renewed or replaced, such renewal or replacement policy does not provide an extended discovery provision of at least six (6) years for such person.

8. **Superannuation Schemes**

With respect to Policy Section 1 - Management Liability only, Definition 22 'Manager' is extended to include any fiduciary capacity held by a **Manager** acting for or on behalf of the **Company** in the operation, administration or sponsorship of any superannuation, profit sharing or **Employee** benefits programme whose activities are not controlled by **Superannuation Trustees**. No cover shall apply for any **Superannuation Trustee Liability**.

9. **Access to Complimentary Legal Advice**

The **Insurer** has arranged for the **BusinessGuard Advisory Panel** to provide at no extra charge confidential legal advice of up to one hour per enquiry deriving from the same or related facts, to any **Insured Person** during the **Policy Period** with respect to:

- (i) employment law;
- (ii) occupational health and safety law; and
- (iii) general commercial law;

concerning the duties and obligations of a director or officer under the relevant laws of the Australian state or Territory in which the **BusinessGuard Advisory Panel** contact is located.

The above Extensions shall only apply to a **Superannuation Trustee** where Policy Section 5 - Superannuation Liability is shown as 'Yes' under 'Section Insured' in the Schedule.

Exclusions

The **Insurer** shall not be liable for **Loss** under Policy Section 1 - Management Liability:

1. Bodily Injury and Property Damage

for **Bodily Injury and/or Property Damage**. This exclusion shall not apply to:

- (i) any **Claim** for emotional distress with respect to **Employment Practices Liability, Third Party Liability** or defamation; or
- (ii) Policy Section 1 – Management Liability Extension 2 ‘Insured Person Statutory Liability; or
- (ii) Policy Section 1 - Management Liability Extension 4 ‘Occupational Health & Safety’ and General Terms & Conditions Extension 2 ‘Regulatory Crisis Response’.

2. Conduct

arising out of, based upon or attributable to:

- (i) any conduct or contravention in respect of which a liability is the subject of a prohibition in section 199B(1) of the *Corporations Act 2001* (Commonwealth); or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act,

in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission by the **Insured Person**.

For the purposes of determining the applicability of this Exclusion, the conduct of any **Insured** shall not be imputed to any other **Insured Person**.

With respect to Policy Section 1 – Management Liability Extension 2 ‘Insured Person Statutory Liability’ only, the **Insurer** shall not be liable for any **Statutory Liability**:

3. Deliberate or Intentional Conduct

for a deliberate, intentional or reckless act or omission.

Definitions

In Policy Section 1 - Management Liability the following words in **bold** shall have the definitions that follow:

1. **Asset and Liberty Proceeding**

any proceeding brought against any **Insured Person** by any **Official Body** seeking:

- (i) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of an **Insured Person**;
- (ii) a charge over real property or personal assets of such **Insured Person**;
- (iii) a temporary or permanent prohibition on such **Insured Person** from holding the office of or performing the function of a director or officer;
- (iv) a restriction of such **Insured Person's** liberty to a specified domestic residence or an official detention;
- (v) deportation of an **Insured Person** following revocation of otherwise proper, current and valid immigration status for any reason other than such **Insured Person's** conviction of a crime.

2. **Bail Bond and Civil Bond Premium**

the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee a **Manager's** contingent obligation for a specified amount required by a court hearing a **Claim**.

3. **Board Director**

a director of the board of the **Policyholder**.

4. **Management Liability**

- (i) any liability arising from any actual or alleged act, error or omission of any **Manager** or arising solely because of any person's status as a **Manager**;
- (ii) **Employment Practices Liability** or **Third Party Liability** of any **Manager**; or
- (iii) with respect to Policy Section 1 – Management Liability Cover 3 'Company Reimbursement' any liability arising from any **Investigation, Occupational Health and Safety Incident** or extradition proceedings.

Management Liability also means with respect to shareholder derivative actions only, any liability arising from any proposed act, error or omission.

5. **Prosecution Costs**

reasonable fees, costs and expenses incurred, with the **Insurer's** prior written consent, by an **Insured Person**, to bring legal proceedings for a declaration and/or an injunction in connection with any **Asset and Liberty Proceedings**.

6. **Reinstatement Limit**

\$1,000,000 per **Policyholder Board Director**. The total aggregate amount payable for **Reinstatement Limits** for all **Policyholder Board Directors** shall be equivalent to the **Limit of Liability** specified in the Schedule for Policy Section 1 – Management Liability or \$5,000,000, whichever is the lesser.

Policy Section 2 - Corporate Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Cover

1. **Corporate Liability**

The **Insurer** shall pay the **Loss** of any **Company** arising from **Corporate Liability**.

2. **Accidental Death**

The **Insurer** will pay up to an aggregate amount of \$100,000 for each **Insured Executive** and \$500,000 in the aggregate to the **Policyholder** in the event of the **Accidental Death** of an **Insured Executive** during the **Policy Period**.

Extensions

1. **Company Pollution Condition Defence Costs**

The **Insurer** shall pay, up to an aggregate amount of \$100,000, the **Defence Costs** of any **Company** arising from a **Pollution Condition**.

2. **Occupational Health & Safety**

The **Insurer** shall pay, up to an aggregate amount of \$500,000 for both (i) and (ii) below:

- (i) **Defence Costs** of any **Company**; and
- (ii) the reasonable fees, costs and expenses incurred by or on behalf of any **Company** with the **Insurer's** prior written consent for the principal purpose of preparing for, responding to, or attending an **Investigation**;

arising from an **Occupational Health & Safety Incident**.

3. **Breach of Contract**

The **Insurer** shall pay, up to an aggregate amount of \$100,000, the **Defence Costs** of any **Company** arising from any **Claim** regarding an alleged breach by any **Company** of any express (written or oral) contract or agreement.

4. **Liability to Third Party Entities due to Employee Dishonesty or Fraud**

The **Insurer** shall pay, up to an aggregate amount of \$100,000, the **Defence Costs** of any **Company** arising from any **Claim** made against such **Company** by a third party entity, where:

- (i) such **Claim** is in connection with any direct financial loss sustained by such third party; and
- (ii) such direct financial loss directly arises in connection with any dishonest or fraudulent act committed by any **Employee** of such **Company** acting in collusion with any director, officer, governor, trustee or **Employee** of such third party, with the intent to obtain improper personal financial gain for such **Employee** or other person, to the deprivation of the third party entity.

5. **Identity Fraud**

If any party other than an **Insured Person** enters into any agreement with any third party entity fraudulently representing themselves as any **Company**, then the **Insurer** shall pay, up to an aggregate amount of \$100,000, any reasonable fees, costs and expenses incurred by such **Company** in establishing that such fraudulent misrepresentation has occurred, should the third party entity seek to enforce such agreement against such **Company**.

6. **Crisis Event**

The **Insurer** shall pay, up to an aggregate amount of \$50,000, the **Insured Entity's** reasonable fees, costs and expenses of **Public Relations Consultants** to mitigate the adverse effect or potential adverse effect on an **Insured Entity's** reputation with respect to a **Crisis Event**.

Extensions (continued)

7. **Disappearance of Insured Executive**

If an **Insured Executive** disappears during the **Policy Period** and after 12 months it is reasonable for the **Insurer** to believe that the **Insured Executive** has suffered an **Accidental Death**, the **Insurer** will pay to the **Policyholder** the benefit specified under Policy Section 2 – Corporate Liability Cover 2 ‘Accidental Death’, subject to receiving a signed undertaking from the **Policyholder** that any such benefit shall be refunded if it is later demonstrated that the **Insured Executive** did not in fact suffer **Accidental Death**.

8. **Superannuation Schemes**

The **Insurer** shall pay, up to an aggregate amount of \$250,000, the **Loss** of any **Company** resulting from any **Claim** in connection with any act, error or omission in connection with the operation, administration or sponsorship of any superannuation, profit sharing or **Employee** benefits programme whose activities are not controlled by **Superannuation Trustees**. No cover under this Extension shall apply to any **Superannuation Trustee Liability**.

9. **Access to Complimentary Legal Advice**

The **Insurer** has arranged for the **BusinessGuard Advisory Panel** to provide at no extra charge confidential legal advice of up to one hour per enquiry deriving from the same or related facts to any **Company** during the **Policy Period** with respect to:

- (i) employment law;
- (ii) occupational health and safety law; and
- (iii) general commercial law;

concerning corporate liability under the relevant laws of the Australian State or Territory in which the **BusinessGuard Advisory Panel** contact is located.

Exclusions

The **Insurer** shall not be liable for **Loss** under Policy Section 2 - Corporate Liability:

1. **Anti-competitive Practices**

in connection with any **Claim** made for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another’s business or contractual relationships.

2. **Benefits**

arising out of, based upon or attributable to any law or obligation pursuant to any workers’ compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, superannuation benefits or any similar law or obligation whatsoever. This Exclusion shall not apply to Policy Section 2 – Corporate Liability Extension 8 ‘Superannuation Schemes’.

3. **Bodily Injury and Property Damage**

for **Bodily Injury and/or Property Damage**. This Exclusion shall not apply to Policy Section 2 – Corporate Liability Extension 2 ‘Occupational Health & Safety’, General Terms & Conditions Extension 2 ‘Regulatory Crisis Response’ or defamation.

4. **Conduct**

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Company** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act,

in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission by the **Company**.

Exclusions (continued)

5. **Contract**

arising out of, based upon or attributable to any liability of any **Company** under any contract or agreement. This exclusion shall not apply to:

- (i) any **Company** liability that would have attached in the absence of such contract; and
- (ii) Policy Section 2 – Corporate Liability Extension 3 'Breach of Contract'.

6. **Employment Practices Liability**

any **Claim** arising out of, based upon or attributable to **Employment Practices Liability** or **Third Party Liability**.

7. **Intellectual Property Rights**

in connection with any **Claim** made for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

8. **Pollution**

arising out of, based upon or attributable to a **Pollution Condition**. This Exclusion shall not apply to Policy Section 2 – Corporate Liability Extension 1 'Company Pollution Condition Defence Costs'.

9. **Professional Services**

in connection with any **Claim** made for rendering or failure to render any service or advice to a customer or client of the **Insured**.

10. **Specified Accidental Death**

the **Insurer** shall not be liable for the **Accidental Death** of an **Insured Executive** which arises out of the **Insured Executive**:

- (i) engaging in any aerial activity, except as a passenger (and not as a pilot or crewmember) in any aircraft licensed to carry passengers;
- (ii) committing suicide, or a criminal or illegal act;
- (iii) being pregnant, or giving birth or having a miscarriage;
- (iv) having Acquired Immune Deficiency Syndrome (A.I.D.S.) disease or Human Immunodeficiency Virus (H.I.V.) infection;
- (v) training for or participating as a professional in any sport;
- (vi) racing in or on any motor powered device;
- (vii) being in control of any motor powered device whilst having a blood alcohol level over the prescribed legal limit or being under the influence of any other drug, unless it was prescribed by a legally qualified medical practitioner;
- (viii) being exposed to radioactive materials in any form whatsoever whether occurring naturally or otherwise; or
- (ix) being in any way involved, directly or indirectly, in war or any consequence of war (whether declared or not), invasion, civil war or act of terrorism.

Definitions

In Policy Section 2 - Corporate Liability the following words in **bold** shall have the definitions that follow:

1. **Accidental Death**

death resulting from:

- (i) an accident caused by sudden, violent, external and visible means and occurring solely and directly and independently of any other cause including any pre-existing physical or congenital condition; or
- (ii) exposure to the elements.

Accidental Death does not include death as a result of a sickness or disease.

2. **Corporate Liability**

any liability arising from any actual or alleged act, error or omission of a **Company**, except with respect to any **Employment Practices Liability** or **Third Party Liability**.

3. **Crisis Event**

any of the following unforeseen events occurring during the **Policy Period** where, in the reasonable opinion of the chief executive officer of the **Policyholder**, the event has the potential to make a material impact on the consolidated annual revenues or the reputation of the **Company** if left unmanaged:

- (i) the sudden, unexpected death or disability of any director or officer;
- (ii) the criminal conviction of any director or officer;
- (iii) loss of a major customer, contract or credit facility;
- (iv) **Employee** workplace violence;
- (v) the first apparent unauthorised intrusion into any **Company's** computer facilities;
- (vi) a recall or boycott of any product;
- (vii) a man-made disaster; or
- (viii) any criminal or fraud investigation.

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

4. **Insured Executive**

any natural person who is, at the time of his or her **Accidental Death**:

- (i) aged between 18 years and 70 years; and
- (ii) a validly appointed member of the board, or director, of the **Policyholder**.

Insured Executive does not include a natural person who during the **Policy Period**:

- (a) resigns or is dismissed from the board of the **Policyholder**; or
- (b) attains the age of 70 years.

Policy Section 3 - Employment Practices Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Covers

1. **Employment Practices Liability**

The **Insurer** shall pay the **Loss** of each **Company** arising from **Employment Practices Liability**.

2. **Third Party Liability**

The **Insurer** shall pay the **Loss** of each **Company** arising from any harassment of or discrimination against any natural person third party who is not an **Employee**.

Extension

1. **Access to Complimentary Legal Advice**

The **Insurer** has arranged for the **BusinessGuard Advisory Panel** to provide at no extra charge confidential legal advice of up to one hour per enquiry deriving from the same or related facts to any **Company** during the **Policy Period** with respect to employment law under the relevant laws of the Australian State or Territory in which the **BusinessGuard Advisory Panel** contact is located.

2. **Insured Person Employment Practices Liability**

The **Insurer** shall pay the **Loss** of each **Insured Person** arising from **Employment Practices Liability**. This Extension shall not apply if Policy Section 1 – Management Liability is shown as 'Yes' under 'Section Insured' in the Schedule.

Exclusions

The **Insurer** shall not be liable for **Loss** under Policy Section 3 – Employment Practices Liability:

1. **Anti-competitive Practices**

in connection with any **Claim** made for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

2. **Benefits**

arising out of, based upon or attributable to any law or obligation pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits, superannuation benefits or any similar law or obligation whatsoever.

3. **Bodily Injury and Property Damage**

for **Bodily Injury and/or Property Damage**. This exclusion shall not apply to any **Claim** for emotional distress with respect to **Employment Practices Liability, Third Party Liability** or defamation.

4. **Conduct**

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Company** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act,

in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission by the **Company**.

Exclusions (continued)

5. *Intellectual Property Rights*

in connection with any **Claim** made for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

6. *Pollution*

arising out of, based upon or attributable to a **Pollution Condition**.

7. *Professional Services*

in connection with any **Claim** made for rendering or failure to render any service or advice to a customer or client of the **Insured**.

Policy Section 4 - Crime Protection

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Cover

1. Employee Fraud or Dishonesty

The **Insurer** shall pay the **Insured Entity** for **Direct Financial Loss** resulting from any acts of fraud or dishonesty committed by any **Employee** (acting alone or in collusion with others) with the principal intent to cause the **Insured Entity** to sustain such **Direct Financial Loss** or to obtain a personal financial gain.

2. Third Party Crime

The **Insurer** shall pay the **Insured Entity** for **Direct Financial Loss** resulting from any **Theft** or **Fraudulent Act** committed by any **Third Party**.

3. Electronic and Computer Crime

The **Insurer** shall pay the **Insured** for **Loss** resulting from any **Electronic and Computer Crime** committed by a **Third Party**.

4. Destruction and Damage of Money or Negotiable Instruments

The **Insurer** shall pay the **Direct Financial Loss** of any **Insured Entity** directly resulting from the physical loss of or damage to or actual destruction or disappearance of any **Insured Entity's Money** or **Negotiable Instruments** including damage to or actual destruction of safes or vaults. If such loss or damage is caused by fire, storm or natural disaster, then maximum amount payable for such loss is \$100,000 in the aggregate payable as part of the **Limit of Liability**.

5. Care, Custody and Control

The **Insurer** shall pay the direct financial loss of any **Third Party** or other organisation, provided the **Insured Entity**:

- (i) has in its care, custody or control the **Money, Negotiable Instruments** or other property belonging to that **Third Party** or other organisation; and
- (ii) is liable to that **Third Party** or other organisation for such direct financial loss.

6. Shareholders

The **Insurer** shall pay the **Direct Financial Loss** of any **Insured Entity** resulting from **Theft** or **Fraudulent Acts** of any person who owns or controls any of the **Insured Entity's** issued share capital. If such person owns or controls more than 5% of the **Insured Entity's** issued share capital, then the **Insurer's** liability for **Direct Financial Loss** shall be reduced by:

- (i) any amount owed to such person by the **Insured Entity**; and
- (ii) the financial value of such person's share in the **Insured Entity** as determined by an independent valuation of such share as at the date such **Theft** or **Fraudulent Act** is first **Discovered**.

2. Extensions

1. Legal Fees

The **Insurer** shall pay, up to an aggregate amount of \$50,000, the **Insured Entity's** reasonable legal fees costs and expenses incurred in the defence of any written demand, claim, suit or legal proceeding, which the **Insured Entity** subsequently establishes results directly from a covered or potentially covered **Direct Financial Loss**.

Extensions (continued)

2. **Reconstitution Costs**

The **Insurer** shall pay, up to an aggregate amount of \$50,000, the **Insured Entity's** reasonable fees, costs and expenses incurred in rewriting or amending the **Insured Entity's** software programs or systems where such rewriting or amending is necessary to correct the programs or systems following a covered **Direct Financial Loss**.

3. **Investigative Specialist Fees**

The **Insurer** shall pay, up to an aggregate amount of \$100,000, the **Insured Entity's** reasonable fees, costs and expenses incurred in retaining a fraud investigator, pre-approved by the **Insurer** in writing, to investigate, prove and report a covered or potentially covered **Direct Financial Loss**. The investigative specialist must not have a conflict of interest concerning such retainer.

No **Retention** shall apply to Extensions 1, 2 and 3 above and amounts are payable in addition to the **Limit of Liability**.

Exclusions

The **Insurer** shall not be liable under Policy Section 4 – Crime Protection for:

1. **Agent Acts**

any act, error or omission of any independent contractor (other than an **Employee**), broker, merchant, external solicitor or external accountant, or other similar agent or representative. This exclusion shall not apply to any organisation to which the **Insured Entity** has outsourced any normal administrative function under a written contract of engagement with such organisation.

2. **Benefits**

salaries, commissions, fees and bonuses, promotions, awards, profit sharing, superannuation or other employee benefits paid by the **Insured Entity** where earned in the normal course of employment.

3. **Confidential Information**

loss of or damage to proprietary information, intellectual property, trade secrets, confidential processing methods, or other confidential information of any kind.

4. **Direct Financial Loss Sustained After Knowledge**

Direct Financial Loss sustained after any **Responsible Person** of an **Insured Entity** first becomes aware that:

- (i) any **Theft** or **Fraudulent Act** has been committed by a **Third Party** or any person who owns or controls more than 5% of the **Insured Entity's** issued share capital;
- (ii) an **Employee** has committed a dishonest or fraudulent act during the term of his or her employment with any **Insured Entity**; or
- (iii) an **Employee** has previously committed a dishonest or fraudulent act prior to employment with any **Insured Entity**, provided the act or acts involved **Money, Negotiable Instruments** or other property valued at \$10,000 or more.

5. **Fire**

Direct Financial Loss or damage caused by fire, other than loss of or damage to **Money, Negotiable Instruments**, safes or vaults covered under Policy Section 4 – Crime Protection Cover 3 'Destruction and Damage of Money or Negotiable Instruments'.

Exclusions (continued)

6. **Forcible and Violent Theft**

Direct Financial Loss occurring following forcible or violent entry to any premises occupied by an **Insured Entity** by any **Third Party**, where such **Third Party** is acting alone and not in collusion with any **Employee**; other than where covered under Policy Section 4 – Crime Protection Cover 3 'Destruction and Damage of Money or Negotiable Instruments'.

7. **Premises Damage**

damage or destruction to any premises or building.

8. **Profit, Loss or Inventory Computation**

Direct Financial Loss which can only be proved solely by:

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

9. **Voluntary Exchange or Purchase**

Direct Financial Loss arising out of the voluntary giving or surrendering (whether or not such giving and surrendering is induced by deception) of **Money, Negotiable Instruments** or other property in any exchange or purchase, unless the **Insured Entity** has taken reasonable steps to prevent such **Direct Financial Loss**.

Definitions

In Policy Section 4 - Crime Protection the following words in **bold** shall have the definitions that follow:

1. **Cheque Forgery**

- (i) the **Forgery** or **Fraudulent Alteration** of any cheque or similar written promise by the **Insured** to pay a veritable sum representing money drawn upon the **Insured's** account at any bank at which the **Insured** maintains a current or savings account;
- (ii) the **Fraudulent Alteration** of, on or in any cheque or draft:
 - (a) drawn upon by any bank; or
 - (b) drawn upon by any corporation upon itself;
- (iii) the **Fraudulent Alteration** of, on or in any cheque or written order or direction to pay a veritable sum representing money drawn by any public body upon itself, or any warrant drawn by any public body which the **Insured** shall receive at any of its premises in payment or purported payment for:
 - (a) tangible property sold and delivered; or
 - (b) services rendered.

2. **Computer**

means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system, or similar device or any computer software, firmware or microcode. **Computer** shall also include its components available to its users, including but not limited to memory, bandwidth, processor time, use of communication facilities and any other computer-connected equipment.

3. **Computer Fraud**

means the theft of the **Insured's** assets under the direct or indirect control of a **Computer** by manipulation of computer hardware or software programmes or systems by any **Third Party** who is not authorised by the **Insured** to access that **Computer**.

Definitions (continued)

4. **Corporate Card Fraud**

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

5. **Counterfeit or Counterfeiting**

the imitation of an authentic negotiable instrument such that the **Insured** is deceived on the basis of the quality of the imitation to believe that the said item is the authentic original negotiable instrument.

Fictitious instruments which merely contain fraudulent misrepresentations of fact and are genuinely signed or endorsed are not **Counterfeit**.

6. **Direct Financial Loss**

direct financial loss sustained by any **Insured Entity**.

7. **Discovered**

knowledge of any act, omission or event which could reasonably be seen to give rise to a **Direct Financial Loss** by any of the **Insured Entity's Responsible Persons**.

8. **Electronic and Computer Crime**

means any one of the following:

- (i) **Computer Fraud**; or
- (ii) **Funds Transfer Fraud**.

9. **Fraudulent Act**

- (i) **Cheque Forgery**;
- (ii) **Corporate Card Fraud**; or
- (iii) **Imitation Fraud**.

10. **Fraudulent Alteration**

a material alteration to an instrument for a fraudulent purpose, unless altered by the person who was authorised to prepare or sign the instrument.

11. **Forgery or Forged**

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.

12. **Funds Transfer Fraud**

means the theft of the **Insured's** funds from an account maintained by the **Insured** at a financial institution (from which the **Insured** or a person or organisation authorised by the **Insured** may request the transfer, payment or delivery of funds), following fraudulent electronic, telegraphic, tested facsimile, tested telex, telephone or written instructions to debit such account and to transfer, pay or deliver funds from such account and which instructions purport to have come from the **Insured** or a person or organisation authorised by the **Insured** to issue such instructions, but which are fraudulently transmitted, issued, or are **Forged** or have been the subject of **Fraudulent Alteration** by any **Third Party**.

Definitions (continued)

13. Imitation Fraud

- (i) the **Forgery** or **Fraudulent Alteration** of any **Money** or **Negotiable Instruments** or instruction;
or
- (ii) the **Counterfeiting** of any **Money** or **Negotiable Instruments**,
upon which the **Insured** has acted or relied.

14. Money

currency, coins, bank notes and bullion, cheques, travellers' cheques, registered cheques, postal orders and money orders.

15. Negotiable Instruments

all securities, instruments or contracts, including any note, stock, bond, debenture, evidence of indebtedness, share or other equity or debt security, representing either money or property, but does not include **Money**.

16. Property

physical property, excluding the building and its fixtures and fittings, **Money** and **Negotiable Instruments**.

17. Responsible Person

any **Employee** acting in a directorial, managerial or supervisory capacity other than any person who has committed any acts of fraud or dishonesty.

18. Theft

the unlawful taking of the **Insured's Money, Negotiable Instruments** or **Property** occurring:

- (i) within the premises; or
- (ii) within the interior of any banking premises or similar recognised place of safe deposit; or
- (iii) while in transit and in the care, custody and control of an **Employee** or director, supervisor of the board or partner of the **Insured** following the actual or threatened use of force or violence; or
- (iv) while in the care, custody and control of any security company or armoured motor vehicle company, duly authorised by the **Insured** to retain such care, custody and control and provided that the **Insurer** 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.

19. Third Party

any natural person other than:

- (i) a **Manager**;
- (ii) any person who owns or controls any of the **Insured Entity's** issued share capital;
- (iii) someone who is acting in collusion with any **Employee**; or
- (iv) any natural person providing services under any contract for services, written or implied, with any **Insured**.

General Provisions

1. *Use of Investigative Specialist*

In reporting and investigating **Direct Financial Loss** in accordance with Policy Section 4 – Crime Protection Extension 3, the investigative specialist shall also advise as to when and how the **Insured Entity's** controls were or may have been breached and summarise recommendations which may prevent future similar **Direct Financial Loss**. The **Insurer** has the right to attend the initial meeting between the **Insured Entity** and the investigative specialist. There shall be no cover for the costs and expenses of an investigative specialist unless the investigative specialist is pre-approved by the **Insurer** in writing.

2. *Basis of Valuation*

In no event shall the **Insurer** be liable for more than:

- (i) the actual market value of **Negotiable Instruments, Money** or precious metals at the close of business on the day the **Direct Financial Loss** was first **Discovered** (determined by the value published in the Australian Financial Review in Australia or equivalent local daily financial newspaper), or the actual cost of replacing the **Negotiable Instruments, Money** or precious metals, whichever is less;
- (ii) the actual cash value of other property (not referred to in (i) above) at the close of business on the day the **Direct Financial Loss** was first **Discovered**, or the actual cost of replacing the property with property of like quality or value, whichever is less;
- (iii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **Insured Entities** in order to reproduce books of account or other records; or
- (iv) the cost of labour for the actual transcription or copying of electronic data furnished by the **Insured Entities** in order to reproduce such electronic data.

Policy Section 5 - Superannuation Trustees Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Covers

1. **Individual Superannuation Trustees**

The **Insurer** shall pay the **Loss** of each **Superannuation Trustee** arising from **Superannuation Trustee Liability**, except to the extent that the **Superannuation Trustee** has been indemnified by the **Insured Entity** for such **Loss**.

2. **Insured Entity Reimbursement**

The **Insurer** shall reimburse or pay on behalf of an **Insured Entity** any **Loss** for which it has indemnified a **Superannuation Trustee** arising from **Superannuation Trustee Liability**.

3. **Exoneration**

The **Insurer** shall pay the **Loss** of the **Plan** resulting from any **Claim** made against a **Superannuation Trustee** in connection with **Superannuation Trustee Liability** for which the **Plan** becomes liable solely and directly as the result of the operation of an **Exoneration Clause**.

4. **Insured Entity Liability**

The **Insurer** shall pay the **Loss** of any **Insured Entity** arising from **Superannuation Trustee Liability**.

5. **Ombudsman and Superannuation Regulator Awards**

The **Insurer** shall pay the **Loss** of each **Superannuation Trustee** where there is a finding of culpability against such **Superannuation Trustee** as determined by an **Official Body** solely and directly as a result of acts, errors or omissions committed by such **Superannuation Trustee**.

Extensions

1. **Loss of Documents**

If any **Company, Plan** or corporate trustee company shall sustain **Loss** caused by loss of any **Document** that is the property of the **Superannuation Trustee**, or for which the **Superannuation Trustee** is legally responsible and;

- (i) such **Document** is or is believed to be in the custody of the **Superannuation Trustee** or in the custody of any other person to whom such **Document** has been entrusted, lodged or deposited by the **Insured**; and
- (ii) in the course of business, such **Document** has been destroyed, damaged, lost or mislaid; and
- (iii) the **Superannuation Trustee** first becomes aware during the **Policy Period** or any applicable **Discovery Period** of facts that would cause a reasonable person to assume that loss or damage to such **Documents** has been sustained, even though the exact amount of details of the loss or damage may not then be known;

then, the **Insurer** will pay, up to an aggregate amount of \$100,000, for the reasonable fees, costs and expenses incurred by any **Company, Plan** or corporate trustee in replacing or restoring such **Document** (excluding the value to the **Insured** of the information or material contained in such **Document**).

Extensions (continued)

2. **Access to Complimentary Legal Advice**

The **Insurer** has arranged for the **BusinessGuard Advisory Panel** to provide at no extra charge confidential legal advice of up to one hour per enquiry deriving from the same or related facts to a **Superannuation Trustee** during the **Policy Period** with respect to:

- (i) superannuation legislation or regulation; and
- (ii) a matter or circumstance that a **Superannuation Trustee** may reasonably expect to give rise to a **Claim** in connection with **Superannuation Trustee Liability**;

under the relevant laws of the Australian State or Territory in which the **BusinessGuard Advisory Panel** contact is located.

Exclusions

The **Insurer** shall not be liable for **Loss** under Policy Section 5 – Superannuation Trustees Liability:

1. **Bodily Injury and Property Damage**

for **Bodily Injury and/or Property Damage**. This Exclusion shall not apply to any **Claim** for emotional distress with respect to **Superannuation Trustee Liability**.

2. **Conduct**

arising out of, based upon or attributable to:

- (i) any conduct or contravention in respect of which a liability is the subject of a prohibition in Section 199B(1) of the *Corporations Act 2001* (Commonwealth); or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act,

in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission by such **Insured**.

For the purposes of determining the applicability of this Exclusion, the conduct of any **Insured** shall not be imputed to any other **Superannuation Trustee**.

3. **ERISA**

arising out of, based upon or attributable to any **Plan**, fund or programme subject to regulation under Title 1 of the Employee Retirement Income Security Act of 1974 (USA), as amended, or any part thereof, or meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986 (USA), as amended.

4. **Failure to Fund a Plan**

in connection with any **Claim** made for failure to fund a **Plan** in accordance with the **Plan** trust document or instrument or the failure to collect contributions owed to the **Plan**. This Exclusion shall not apply to **Defence Costs**.

5. **Superannuation Benefits**

which constitutes **Superannuation Benefits**, or that portion of any settlement or award in an amount equal to such **Superannuation Benefits**, unless and to the extent that recovery of such **Superannuation Benefits** is based solely upon a covered **Superannuation Trustee Liability** and is payable as a personal obligation of a **Superannuation Trustee**.

Definitions

In Policy Section 5 - Superannuation Trustees Liability the following words in **bold** shall have the definitions that follow:

1. Document

means all documents, in paper or electronic version (excluding any bearer bonds, coupons, bank or currency notes or any other negotiable instruments whether printed or reproduced by any other method) the property of the **Superannuation Trustee** or for which the **Superannuation Trustee** is legally responsible which relate to any **Plan**.

2. Exoneration Clause

any provision in the governing trust deeds or rules of a **Plan** which relieves a **Superannuation Trustee** of the burden of blame, obligation, duty, responsibility or liability which, in the absence of such clause, would attach to that **Superannuation Trustee**.

3. Superannuation Benefits

any obligation under a **Plan** to a participant or beneficiary under a **Plan** which is a payment of money or property, or the grant of a privilege or perquisite.

Policy Section 6 - Statutory Liability

In consideration of the payment of the premium or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

Cover

1. **Insured Person Statutory Liability**

The **Insurer** shall pay the **Statutory Liability** of any **Insured Person** arising from:

- (i) **Management Liability**, where Policy Section 1 - Management Liability is positively marked 'Yes' under 'Section Insured' in the Schedule; and
- (ii) **Superannuation Trustees Liability**, where Policy Section 5 - Superannuation Trustees Liability is positively marked 'Yes' under 'Section Insured' in the Schedule.

2. **Insured Entity Statutory Liability**

The **Insurer** shall pay the **Statutory Liability** of any **Insured Entity** arising from:

- (i) **Corporate Liability**, where Policy Section 2 - Corporate Liability is positively marked 'Yes' under 'Section Insured' in the Schedule;
- (ii) **Employment Practices Liability**, where Policy Section 3 - Employment Practices Liability is positively marked 'Yes' under 'Section Insured' in the Schedule; and
- (iii) **Superannuation Trustees Liability**, where Policy Section 5 - Superannuation Trustees Liability is positively marked 'Yes' under 'Section Insured' in the Schedule.

Exclusions

The **Insurer** shall not be liable for any **Statutory Liability** under Policy Section 6 – Statutory Liability:

1. **Deliberate or Intentional Conduct**

for a deliberate, intentional or reckless act or omission.

With respect to Policy Section 6 – Statutory Liability Cover 2 'Insured Entity Statutory Liability' only, the **Insurer** shall not be liable for any **Statutory Liability**:

2. **Anti-Competitive Practices**

for any violation of any law or regulation with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships.

3. **Corporations Act**

for any violation of Sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth).

4. **ERISA**

with respect to any **Plan**, fund or programme subject to regulation under Title 1 of the *Employee Retirement Income Security Act of 1974* (USA), as amended, or any part thereof, or meets the requirements for qualification under Section 401 of the *Internal Revenue Code of 1986* (USA), as amended.

5. **Professional Services**

in connection with any **Claim** made for rendering or failure to render any service or advice to a customer or client of the **Insured**.

6. **Tax**

for any violation of any law or regulation with respect to tax, rate, duty, levy, charge, fee or any other revenue charge or impost.

7. **Traffic**

for any violation of any law or regulation with respect to vehicular, air or marine traffic.

General Terms and Conditions

In consideration of the payment of the premium the **Insurer** and the **Policyholder** agree as follows.

Extensions

1. **Court Attendance**

The **Insurer** shall pay the following rates per day for each day on which attendance in a court by an **Insured Person** is required in connection with any covered **Claim**, up to an aggregate amount of \$100,000:

- (i) for any director or officer; **Outside Entity Director**; or any **Employee**; of an **Insured Entity** acting in a managerial or supervisory capacity: \$300
- (ii) any other **Insured Person** not referred to in (i) above: \$150

2. **Regulatory Crisis Response**

In addition to **Defence Costs** and **Investigation Costs**, the **Insurer** will pay, up to an aggregate amount of \$100,000, for the reasonable fees, costs and expenses incurred by or on behalf of any **Insured** in retaining legal advisers for the principal purpose of responding to a **Critical Regulatory Event**.

3. **Discovery Period**

The **Policyholder** shall be entitled to a **Discovery Period** either:

- (i) automatically of 60 days if this policy is not renewed or replaced with a similar policy; or
- (ii) (a) 12 months at 100% of the full annual premium in effect at the expiry of the **Policy Period**; or
(b) 24 months at 150% of the full annual premium in effect at the expiry of the **Policy Period**
subject to the **Policyholder** making a request for such **Discovery Period** in writing prior to the expiry of the **Policy Period** and paying the additional premium required, no later than 30 days after the expiry of the **Discovery Period**.

A **Discovery Period** is non-cancellable and shall not apply if a **Transaction** occurs. However, upon written request of the **Policyholder**, the **Insurer** may quote a run-off **Discovery Period**. In considering such request, the **Insurer** shall be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations that the **Insurer** reasonably deems appropriate.

4. **Emergency Costs**

If the **Insurer's** written consent cannot be obtained within a reasonable time before **Defence Costs** are incurred with respect to any **Claim**, or costs are incurred with respect to a **Crisis Loss**, then the **Insurer** shall allow retrospective approval for such costs up to, in the aggregate, ten percent (10%) of the **Limit of Liability** of the applicable coverage Section.

5. **Legal Expenses Policy**

Where any **Insured** holds a **Legal Expenses Policy** at the same time as this policy, which provides cover which is the same as any cover provided under this policy, such that the **Insured** is covered for legal expenses under both this policy and the **Legal Expenses Policy**, then the **Insurer** shall pay such legal expenses on a primary basis on the condition that prior to such payment, the **Insured** has notified its **Legal Expenses Policy** insurer in writing of its request for cover with respect to such legal expenses, and provides written evidence to the **Insurer** of such notification.

Extensions (continued)

6. **New Subsidiary**

If the **Policyholder** during the **Policy Period** creates any entity or obtains **Control** of any entity either directly or indirectly through one or more other entities then the term **Subsidiary** shall be extended to include that entity automatically, unless at the time of the **Policyholder** obtaining such **Control**, such entity:

- (i) is incorporated or domiciled in the United States of America;
- (ii) has and continues to have any of its **Securities** listed on any securities exchange or market; or
- (iii) is situated in a country in which a **Company** does not already hold a **Subsidiary**.

Exclusions

The **Insurer** shall not be liable under any Policy Section for:

1. **Prior Claims and Circumstances, Notifications**

- (i) **Loss** arising out of, based upon or attributable to:
 - (a) facts alleged or the same or related acts, errors or omissions alleged or contained in any **Claim** which has or should have been notified or in any circumstances of which notice has or should have been given under any policy of which this policy is a renewal or replacement or which it may succeed in time; or
 - (b) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration or adjudication as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts as alleged in such actions.
- (ii) **Direct Financial Loss**:
 - (a) arising out of, based upon or attributable to any fact, matter, circumstance or occurrence which has been notified to any insurer under any other policy of insurance effected prior to the inception date of this policy; or
 - (b) of which the **Insured Entity** or its **Responsible Persons** were aware prior to the inception date of this policy; or
 - (c) occurring prior to the date upon which a **Subsidiary** became a covered **Subsidiary**.

Definitions

In this policy the following words in **bold** shall under all Policy Sections have the definitions that follow:

1. **Bodily Injury and/or Property Damage**

bodily injury, sickness, disease, death or emotional distress of any natural person; or damage to, destruction, impairment or loss of use of any property.

2. **BusinessGuard Advisory Panel**

the solicitors appointed from time to time by the **Insurer**, as currently listed in Appendix I.

3. **Claim**

- (i)
 - (a) a written demand;
 - (b) a civil, regulatory, mediation, administrative or arbitration proceeding, including a counter-claim, seeking compensation or other legal remedy;
 - (c) a criminal proceeding;for a specified act, error or omission;
- (ii) an **Investigation** or **Critical Regulatory Event**;
- (iii) an extradition proceeding; or
- (iv) an **Asset and Liberty Proceeding**.

Definitions (continued)

4. **Company**

the **Policyholder** or any **Subsidiary**.

5. **Continuity date**

the applicable date specified as such in the Schedule.

6. **Control**

the securing of the affairs of an entity by means of:

- (i) controlling the composition of the board of directors of such entity;
- (ii) controlling more than half of the shareholder or equity voting power of such entity; or
- (iii) holding more than half of the issued share or equity capital of such entity.

7. **Critical Regulatory Event**

- (i) a raid on, or on-site visit to, any **Company** which first takes place during the **Policy Period** by any regulator that involves the production, review, copying or confiscation of files or interviews of any **Insured Person**;
- (ii) a public announcement relating to the foregoing.

8. **Defence Costs**

- (i) reasonable fees, costs and expenses incurred by or on behalf of an **Insured** either as emergency costs under General Terms & Conditions Extension 4 'Emergency Costs', or with the **Insurer's** prior written consent, after a **Claim** is made in the investigation, defence, settlement or appeal of such **Claim**; or
- (ii) reasonable fees, costs and expenses of accredited experts retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in respect of a **Claim** specified in (i) above.

9. **Discovery Period**

a period immediately following expiry of the **Policy Period** during which written notice may be given to the **Insurer** of:

- (i) any **Direct Financial Loss Discovered** during such period of time in connection with any act committed prior to the end of the **Policy Period**, provided any applicable additional premium required by the **Insurer** is paid within 30 days of expiry of the **Policy Period**;
- (ii) a **Claim** first made during such period or the **Policy Period**;
 - (a) with respect to an act, error or omission occurring prior to the expiry of the **Policy Period**; or
 - (b) in the case of an **Investigation**, extradition proceedings or **Asset & Liberty Proceedings**, matters which occurred prior to the expiry of the **Policy Period**.

10. **Employee**

- (i) any natural person full-time, part-time, seasonal or temporary worker of any **Company** who works under a contract of service with the **Company**, or who is undertaking work experience, whom such **Company** has the right to govern and direct in the performance of such services, and whom the **Company** compensates by way of salary, wages and/or commissions;
- (ii) any natural person independent contractor or any natural person, including volunteers, seconded to the **Company**, if such individual is under the direction and supervision of the **Company** and the **Company** provides indemnification to such individual in the same manner as is provided to the **Employees** referred to in (i) above; or

Definitions (continued)

- (iii) with respect to Policy Section 4 - Crime Protection only:
 - (a) any natural person employed by an organisation to which the **Company** outsources any normal administrative function under a written contract of engagement with such organisation; or
 - (b) any **Superannuation Trustee**.

11. **Employment Practices Liability**

any liability arising from any actual or alleged act, error or omission with respect to:

- (i) any employment of any past, present or future **Employee** or **Insured Person** of any **Company**; or
- (ii) any prospective employment of any person.

12. **Employment-Related Benefits**

- (i) perquisites and fringe benefits;
- (ii) payments due under any employee benefit plan or superannuation scheme;
- (iii) stock or share options or any other right to purchase, acquire or sell stock or shares of any **Company**; or
- (iv) incentive or deferred compensation.

13. **Insured**

any **Insured Entity** and/or **Insured Person**.

14. **Insured Entity**

any **Company** or **Plan**.

15. **Insured Person**

Manager or natural person **Superannuation Trustee**.

16. **Insurer**

AIG Australia Limited ABN 93 004 727 753 AFSL 381686.

17. **Investigation**

any hearing, examination, investigation or inquiry by an **Official Body** into the affairs of an **Insured Entity** or **Outside Entity**, or an **Insured Person** of such entity, once an **Insured Person** receives written documentation during the **Policy Period**:

- (i) requiring them to attend before or produce documents to, or answer questions by or attend interviews with, the **Official Body**; or
- (ii) identifying them as a target in writing by an investigating **Official Body** as a target of the hearing, examination, investigation or inquiry.

An **Investigation** shall be deemed to be first made when the **Insured Person** is first so required or so identified.

18. **Investigation Costs**

the reasonable fees, costs and expenses incurred by or on behalf of an **Insured Person** with the **Insurer's** prior written consent for the principal purpose of preparing for, responding to, or attending an **Investigation**. However, **Investigation Costs** shall not include the remuneration of any **Insured Person**, cost of their time or costs or overheads of any **Company**.

19. **Legal Expenses Policy**

any policy solely or primarily providing cover for legal expenses.

20. **Limit of Liability**

the sums specified in the Policy Schedule.

Definitions (continued)

21. Loss

any amount which the **Insured** is legally liable to pay resulting from a **Claim** made against an **Insured**, including **Defence Costs**, **Investigation Costs** and all other costs and expenses payable under this policy, awards of damages (including punitive and exemplary damages), awards of costs or settlements (including claimant's legal costs and expenses), pre- and post- judgment interest on a covered judgment or award, and the multiplied portion of multiple damages. **Loss** includes any amount covered under any Extension applicable to the Insurance Cover purchased.

Loss shall not include:

- (i) any fines and penalties except to the extent covered under Policy Section 1 Extension 2 'Insured Person Statutory Liability' or Policy Section 6 – Statutory Liability;
- (ii) taxes;
- (iii) remuneration, cost of the time of any **Insured Person**, or costs or overheads of any **Insured Entity**, except with respect to General Terms & Conditions Extension 1 'Court Attendance'; or
- (iv) amounts which are uninsurable under the applicable law of the **Claim**.

Additionally, with respect to any **Claim** in connection with **Employment Practices Liability** or **Third Party Liability** only, **Loss** shall not include:

- (a) compensation payable in respect of contractual or statutory notice periods;
- (b) amounts payable in respect of a specified contractual obligation, except to the extent such obligation would have attached in the absence of such contract;
- (c) **Employment-Related Benefits**;
- (d) any liability or costs incurred by any **Insured** to modify any building or property in order to make the building or property more accessible or accommodating to a disabled person;
- (e) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **Employment Practice Liability** or **Third Party Liability Claim** or the costs of reinstatement of any **Employee**.

22. Manager

any natural person who was, is or during the **Policy Period** becomes:

- (i) a director, officer or committee member of any **Company**, but not an external auditor or insolvency office-holder of any **Company**;
- (ii) an **Employee** of any **Company**;
- (iii) a shadow director or de facto director; or
- (iv) an **Outside Entity Director**;

but only when and to the extent that such **Manager** is acting for and on behalf of the **Company** in any of the capacities referred to in (i) to (iv) above.

Manager is extended to include:

- (a) the spouse or domestic partner (including same sex relationship civil partnerships, if applicable); and
- (b) the administrator, heirs, legal representatives, or executor of a deceased, incompetent insolvent or bankrupt estate;

of the **Manager** referred to in (a) to (b) above with respect to the acts, errors or omissions of such **Manager**.

23. Occupational Health & Safety Incident

any actual or alleged breach of an occupational health and safety law or regulation, including a law or regulation dealing with industrial or workplace deaths.

Definitions (continued)

24. Official Body

any regulator, disciplinary body, criminal authority, government body, government agency, official trade body, or any other person or body having legal authority to conduct an **Investigation**.

25. Outside Entity

any entity, including any not for profit entity, but other than an entity that:

- (i) is a **Subsidiary**;
- (ii) is incorporated or domiciled in the United States of America;
- (iii) is a bank, clearing house, credit institution, undertaking for collective investment in securities, investment firm, investment advisor/manager, investment fund or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity; or
- (iv) has its **Securities** listed on any **Securities** exchange;

unless listed by endorsement to this policy as an **Outside Entity**.

26. Outside Entity Director

a natural person who did or does, or during the **Policy Period** begins to serve, at the specific request of any **Company** as a director, officer, trustee (other than as a **Superannuation Trustee**), governor or equivalent of an **Outside Entity**.

27. Plan

- (i) any past, present or future employee benefit or welfare benefit plan; or
- (ii) any past or present superannuation plan;

established, administered or sponsored by the **Company** for the sole benefit of its **Employees**;

Plan also includes:

- (a) any superannuation, employee benefit or welfare benefit plan merged, transferred or terminated prior to or during the **Policy Period**; or
- (b) any superannuation, employee benefit or welfare benefit plan created or acquired by the **Policyholder** during the **Policy Period**.

28. Policyholder

the organisation specified in the Schedule.

29. Policy Period

the period from the inception date to the expiry date specified in the Schedule.

30. Pollutant

any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including, but not limited to, asbestos, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste.

31. Pollution Condition

any actual, alleged or threatened discharge, dispersal, release or escape of a **Pollutant**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, nuclear material or nuclear waste.

32. Public Relations Consultants

public relations consultants retained by the **Insured** with the **Insurer's** prior written consent.

33. Public Relations Services

services provided by the **Public Relations Consultants** to an **Insured Person** directly to mitigate the adverse effect or potential adverse effect on an **Insured Person's** reputation.

Definitions (continued)

34. Retention

the sum specified in the Schedule.

35. Security

any security representing debt of or equity interests in any **Company**.

36. Senior Counsel

a senior lawyer to be mutually agreed upon by the parties, or in the absence of agreement, to be appointed by the head of the bar association/law society (or equivalent organisation) in the jurisdiction in which the **Loss** was incurred.

37. Statute

any Act, regulation or other legislative instrument enacted under the laws of the Commonwealth of Australia, any Australian State or Australian Territory or New Zealand.

38. Statutory Liability

any fine or pecuniary penalty pursuant to any **Statute** which an **Insured** is legally liable to pay resulting from a **Claim** made against the **Insured**.

Statutory Liability shall not include:

- (i) any amounts representing damages or compensation;
- (ii) any compliance, remedial, reparation or restitution costs;
- (iii) any amount which the **Insurer** is prohibited from paying by law.

39. Subsidiary

any entity which the **Policyholder Controls** either directly or indirectly through one or more other entities on or before the inception date of this policy.

Cover for any **Subsidiary** or any **Insured Persons** of such **Subsidiary** shall only apply for **Fraudulent Acts**, or acts, errors or omissions committed or occurring whilst such entity is or was a **Subsidiary**.

40. Superannuation Trustee

- (i) any natural person who was, now is or shall be:
 - (a) a superannuation trustee, committee member or administrator of the **Plan** or constructive trustee of the **Plan**;
 - (b) a director or officer or **Employee** of a **Company**, **Plan** or corporate superannuation trustee company established to act as a superannuation trustee of the **Plan**, but not an external auditor or insolvency office-holder; or
- (ii) any corporate superannuation trustee company established to act as a superannuation trustee or administrator of the **Plan**;

but solely while acting in the capacity as a superannuation trustee or administrator of any **Plan**.

Superannuation Trustee also includes any natural person who was, is or during the **Policy Period** becomes responsible for internal dispute resolution procedures of a **Plan**.

41. Superannuation Trustee Liability

any liability arising from any actual or alleged act, error or omission with respect to any **Plan**; or arising solely because of any person's status as a **Superannuation Trustee**.

42. Third Party Liability

any liability arising from any actual or alleged act, error or omission with respect to any harassment of or discrimination against any natural person third party who is not and has not been an **Employee**.

Definitions (continued)

43. Transaction

any one of the following events:

- (i) the **Policyholder** consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (ii) any person or entity, or persons or entities acting in concert (other than a **Subsidiary** or **Subsidiaries**) acquires **Control** of the **Policyholder**; or
- (iii) any **Company** lists its **Securities** on any exchange or market.

Claims

The following Provisions apply to all policy Sections:

1. **Notification of Claims and Circumstances, and Direct Financial Loss**

The Covers provided under this policy are granted solely with respect to any **Claim, Direct Financial Loss**, or other event covered in the Extensions that is notified to the **Insurer** as soon as practicable after the **Policyholder's** Finance Director, Risk Manager or General Counsel (or equivalent position) first becomes aware of such **Claim, Direct Financial Loss** or other event covered in the Extensions, but in all situations no later than:

- (i) during the **Policy Period** or **Discovery Period**; or
- (ii) within 60 days after the end of the **Policy Period** or **Discovery Period** as long as notice is given to the **Insurer** within 60 days after such **Claim** was first made against the **Insured** or such **Direct Financial Loss** is first **Discovered** by the **Insured Entity**.

Any **Insured** may, during the **Policy Period** or **Discovery Period**, notify the **Insurer** of any circumstance reasonably expected to give rise to a **Claim**. The notice must include the reasons for anticipating that **Claim** and full relevant particulars as to dates, acts and the potential **Insured** and claimant concerned.

If the **Insured Entity** notifies a **Direct Financial Loss** to the **Insurer** the **Insured Entity** must provide to the **Insurer** as soon as practicable but no later than 6 months after such loss is first **Discovered**:

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

Direct Financial Loss Discovered by an **Insured Entity** or any **Responsible Person** of such **Insured Entity** shall constitute knowledge possessed and **Direct Financial Loss Discovered** by all **Insured Entities**.

All notifications relating to **Claims** or circumstances, or **Direct Financial Loss** must be in writing, referencing the Policy Number and addressed to:

Financial Lines Claims Manager
AIG
Level 19, Citigroup Centre, 2 Park Street, Sydney NSW 2000 Australia
or by facsimile to +612 9240 1722
or by email to jane.pochon@aig.com

2. **Notice of Accidental Death**

The **Policyholder** must give written notice of an **Accidental Death** under Policy Section 2 – Corporate Liability, including proof of identity and supporting medical evidence in the form required by the **Insurer**, within 30 days of the **Accidental Death** of an **Insured Executive** or as soon thereafter as is reasonably possible.

Claims (continued)

3. **Related Claims and Circumstances**

If a **Claim** or circumstance is notified under this policy, then any subsequent **Claim**, alleging, arising out of, based upon or attributable to the facts or acts, errors or omissions alleged in that **Claim** or described in that circumstance, shall be deemed to have first been made at the same time as that **Claim** was first made or circumstance notified, and notified to the **Insurer** on the date the notices were first provided.

Any **Claim** arising out of, based upon or attributable to any **Claim** or series of **Claims** arising out of, based upon or attributable to continuous, repeated or related acts, errors or omissions, whether or not committed by more than one **Insured** and whether directed to or affecting one or more person or entity, shall be considered a single **Claim** for the purposes of this policy.

4. **Related Direct Financial Loss**

For the purpose of the **Limit of Liability** and applying the **Retention**, any **Direct Financial Loss** resulting from any single act, single omission, or single event, or series of related or continuous acts, omissions or events shall be considered a single **Direct Financial Loss**.

5. **Defence and Settlement**

The **Insured** shall have the obligation to defend and contest any **Claim** made against them. The **Insurer** shall be entitled to participate fully in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**. In the event of any **Claim**, each **Insured** shall take reasonable steps to reduce or diminish any **Loss**.

Notwithstanding the foregoing, the **Insured** shall have the right to tender the defence of the **Claim** to the **Insurer**, which right shall be exercised in writing solely by the **Policyholder** on behalf of all **Insureds**. This right shall terminate if not exercised within 30 days of the date the **Claim** is first made against an **Insured**. The **Insurer** shall confirm the assumption of the defence of such **Claim** to the **Policyholder** in writing. Pending such acceptance by the **Insurer**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or **Insurer** with respect to such **Claim**. The **Insurer** shall be obligated to assume the defence of such **Claim** provided the **Insureds** have complied with the foregoing. The **Insurer** shall have no obligation to continue to defend such **Claim** once the **Limit of Liability** has been exhausted.

The **Insurer** consents to the appointment of any **BusinessGuard Advisory Panel** member firm to act on behalf of the **Insured** in respect of any **Claim** defended in accordance with this policy.

All **Insureds** shall at their own cost, render all reasonable assistance to and cooperate with the **Insurer** in the investigation, defence, settlement or appeal of a **Claim** or circumstance, and provide the **Insurer** with all relevant information pertaining to any **Claim** or circumstance, as the **Insurer** may reasonably require. The **Insurer** will accept as necessary the retention of separate legal representation to the extent required by a material conflict of interest between any **Insureds**.

If a **Claim** is made against an **Insured Person** by the **Company** or **Outside Entity**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or the **Company** in relation to that **Claim**.

The applicable **Insured** or **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

6. **Consent**

Only those settlements, judgments, and costs and expenses which have been consented to by the **Insurer** (which shall not be unreasonably delayed or withheld) shall be payable as **Loss** under this policy.

Where there is a dispute between the **Insured** and the **Insurer** as to whether a **Claim** should be settled or should continue to be defended, within 30 days after notice of such dispute, the **Insurer**, at its expense, shall refer the matter to a **Senior Counsel** who shall determine whether, on the balance of probabilities, the **Insured** is likely to succeed in defending the **Claim** to final resolution or whether the **Claim** should be settled.

Claims (continued)

If the **Senior Counsel** determines that the **Claim** should be settled, the **Insured** may elect to continue the defence of that **Claim** without the **Insurer's** prior written consent provided that the **Insurer's** liability for all **Loss** arising from that **Claim** shall not exceed the amount for which that **Claim** could have been settled plus the **Defence Costs** incurred to the date such determination was provided in writing to the **Insured**.

The **Senior Counsel** shall determine the amount for which that **Claim** could have been settled at the **Insurer's** expense, taking into account the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action.

7. **Allocation**

The **Insurer** will be liable only for **Loss** to the extent it arises from a covered **Claim**. If a **Claim** involves both covered and uncovered matters or persons under this policy, then the **Insured Entity** or **Insured Person**, and the **Insurer** shall use commercially reasonable efforts to determine a fair and equitable allocation of **Loss** covered under this policy, on the basis of established judicial allocation principles which take into account the legal and financial exposures, and the relative benefits obtained by the relevant parties.

If the **Insurer** and the **Insured Entity** or **Insured Person** cannot agree on allocation in accordance with this clause within 14 days of any allocation issue first notified in writing to the **Insured** by the **Insurer**, then they agree to refer the determination to a **Senior Counsel**, whose decision shall be final and binding on all parties. The **Senior Counsel** is to determine the fair and equitable allocation as an expert, not as an arbitrator. The relevant **Insured** and the **Insurer** shall be entitled to make written submissions to **Senior Counsel**. The **Senior Counsel** is to take account of the parties' submissions, but the **Senior Counsel** is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The **Senior Counsel's** expenses in providing such determination will be paid by the **Insurer** and any such payments will not erode the **Limit of Liability**.

8. **Advance Payment of Costs**

Where the **Insurer** has not assumed the defence of a **Claim** in accordance with General Terms & Conditions Claims Condition 5 'Defence and Settlement', the **Insurer** shall advance all **Defence Costs** and all other costs and expenses payable under this policy, within 21 days after sufficiently detailed invoices for those costs are received and accepted for payment by the **Insurer**. The **Insurer** may not refuse to advance **Defence Costs** or other costs and expenses payable under this policy by reason only that the **Insurer** considers that conduct specified in the 'Conduct' Exclusion in Policy Sections 1, 2, 3, 5 or 6 has occurred, until such time as the condition to that Exclusion is satisfied.

9. **Subrogation**

In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insureds'** rights of recovery, contribution and indemnity and the **Insured** will provide all reasonable assistance and will do nothing to prejudice such rights. The **Insurer** will not exercise its rights of subrogation against an **Insured Person** in connection with a **Claim**, unless it can establish that the 'Conduct' Exclusion in Policy Sections 1, 2, 3, 5 or 6, applies to that **Claim** and that **Insured Person**. With respect to General Terms & Conditions Extension 5 'Legal Expenses Policy', the **Insurer** shall be entitled to the relevant **Insured's** rights of recovery under the **Legal Expenses Policy** against the **Legal Expenses Policy** insurer immediately upon any payment under this policy, and such **Insureds** shall provide and execute all documentation requested by the **Insurer**.

Claims (continued)

10. **Continuity**

Notwithstanding the “*Prior Claims and Circumstances, Notifications*” Exclusion, cover is provided under this policy for any **Claim**, or circumstance, which could or should have been notified under any earlier policy, provided always:

- (i) the **Claim**, or circumstance, could and should have been notified after the **Continuity Date**; and
- (ii) the **Claim** shall be dealt with in accordance with all terms, conditions, exclusions and limitations of the policy under which the **Claim**, or circumstance, could and should have been notified but only where such earlier policy affords no broader cover in respect of the **Claim** than the provisions of the policy; and
- (iii) if the **Insurer** is the insurer on risk for the policy in (ii) above, the **Insured** agrees to claim on this policy only and to make no claim on such earlier policy.

Limit & Retention

1. **Limit of Liability**

If the Schedule specifies an ‘Aggregate Limit of Liability’, the total amount payable by the **Insurer** under all policy Sections shall not exceed this amount, other than with respect to Policy Section 1 – Management Liability Cover 4 ‘Reinstatement Limit’.

If the Schedule specifies a ‘Limit of Liability’ or ‘Sub-Limit’ for each policy Section shown as ‘Yes’ under ‘Section Insured’ in the Schedule, a separate aggregate **Limit of Liability** shall apply to each policy Section. Each such **Limit of Liability** is the aggregate limit of the **Insurer’s** liability with respect to all **Loss** arising under such policy Section, other than with respect to Policy Section 1 – Management Liability Cover 4 ‘Reinstatement Limit’.

Policy Section 1 – Management Liability Cover 4 ‘Reinstatement Limit’ applies excess of the **Limit of Liability** for Policy Section 1 – Management Liability for any **Claim** that is not a related **Claim** or circumstance as specified in General Terms & Conditions Claims Condition 3 ‘Related Claims and Circumstances’.

The **Insurer** shall have no further liability in excess of all such limits, irrespective of the number of **Insureds** or amount of any **Loss** or **Direct Financial Loss**, including with respect to any **Claim** as specified in General Terms & Conditions Claims Condition 3 ‘Related Claims and Circumstances’ or General Terms & Conditions Claims Condition 4 ‘Related Direct Financial Loss’.

Policy Extensions only apply to **Loss** or **Direct Financial Loss** under each policy Section shown as ‘Yes’ under ‘Section Insured’ in the Schedule. Any amount specified in the policy or the Schedule for any Insurance Cover or Extension is the most the **Insurer** will pay in the aggregate under this policy:

- (i) as **Loss** under such Insurance Cover or Extension; or
- (ii) regarding any single **Direct Financial Loss** under such Insurance Cover or Extension.

Limit & Retention (Continued)

2. **Retention**

No **Retention** shall be borne by an **Insured Person**. To the extent that an **Insured Person** has been indemnified by the **Company**, the **Insurer** shall only reimburse or pay on behalf of the **Company** the amount which is in excess of any applicable **Retention** shown on the Schedule. In respect of Policy Section 4 – Crime Protection, the **Insurer** shall only pay the amount of **Direct Financial Loss** which is in excess of any applicable **Retention** shown on the Schedule.

A single **Retention** shall apply to all:

- (i) **Loss** arising from any **Claim** as specified in General Terms & Conditions Claims Condition 3 'Related Claims and Circumstances'; or
- (ii) **Direct Financial Loss** as specified in General Terms & Conditions Claims Condition 4 'Related Direct Financial Loss'.

Where a **Retention** applies, if any **Insured Entity** is legally permitted or required to indemnify an **Insured Person** but fails to do so within 30 days, then the **Insurer** shall advance to such **Insured Person** all **Loss** within the **Retention** which will be repaid by the **Company** to the **Insurer** as soon as reasonably practicable.

Retention waiver: Where a **Retention** is payable with respect to any **Claim** under any Insurance Cover purchased under this policy, the **Insurer** shall waive payment of such **Retention**, or shall refund any **Retention** monies paid, where, with respect to such **Claim**, there is:

- (i) final adjudication by a judicial or arbitral tribunal of no liability in favour of all **Insureds** against whom such **Claim** is made; or
- (ii) a complete and final settlement exonerating all **Insureds** from liability;

and which does not impose the payment of any monies or any other obligations on any such **Insured**.

General Provisions

1. **Terms and Conditions of Each Section**

Unless otherwise stated:

- (i) the definitions, terms, conditions and exclusions set out in the General Terms and Conditions apply to all Sections; and
- (ii) the definitions, terms, conditions and exclusions of Policy Section 1 - Management Liability, Policy Section 2 - Corporate Liability, Policy Section 3 - Employment Practices Liability, Policy Section 4 - Crime Protection, Policy Section 5 - Superannuation Trustees Liability and Policy Section 6 – Statutory Liability apply only to each respective Section.

In the case of inconsistency or conflict, Policy Section 1 - Management Liability, Policy Section 2 - Corporate Liability, Policy Section 3 - Employment Practices Liability, Policy Section 4 - Crime Protection, Policy Section 5 - Superannuation Trustees Liability and Policy Section 6 – Statutory Liability override the General Terms and Conditions.

Coverage is only available for any Section shown as 'Yes' under 'Section Insured' in the Schedule.

2. **Non-Avoidance**

Except in respect of Policy Section 4 - Crime Protection:

- (i) this policy is not avoidable or rescindable in whole or in part with respect to any **Insured Person**, and the **Insurer** shall have no other remedy, with respect to any pre-inception misrepresentation or pre-inception non-disclosure by any **Insured Person** in connection with this policy; and
- (ii) if the **Insurer** has a right to reduce its liability under Section 28(3) of the *Insurance Contracts Act 1984* (Commonwealth) for any fraudulent misrepresentation or fraudulent non-disclosure of a matter or fact established by final adjudication of a judicial or arbitral tribunal, or any formal written admission by or on behalf of any **Insured Person**, the **Insurer** will only exercise such right against that **Insured Person**.

3. **Cancellation**

The **Policyholder** may cancel this policy by providing written notice to the **Insurer** in which case the **Insurer** shall retain the pro-rata proportion of the premium plus 20% of that pro-rata proportion. The **Insurer** may cancel this policy as and in the manner permitted by law and shall be entitled to retain the pro-rata proportion of the premium. Cancellation of this policy does not extinguish any cover available under Policy Section 1 – Management Liability Extension 7 'Run-off for Retired Insured Persons'.

4. **Severable Nature of the Policy**

Except in respect of Policy Section 4 - Crime Protection, this policy is a severable policy covering each **Insured** for their own individual interest.

With respect to the 'Conduct' Exclusion in Policy Sections 1, 2, 3, 5 or 6, and the contents of any proposal form or declaration submitted, or statements, warranties and representations made to the **Insurer** in connection with this policy, or any policy of which this policy is a renewal or replacement:

- (i) with respect to any **Insured Person**: no statements made by or on behalf of an **Insured Person**, or information or knowledge possessed by an **Insured Person**; nor any act, error or omission of an **Insured Person**, shall be imputed to any other **Insured Person**, for the purpose of determining whether any **Insured Person** is covered under this policy;
- (ii) with respect to any **Insured Entity**: only the statements and knowledge of any Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or Chief Legal Officer/General Counsel of the **Policyholder**, or any person who signed the declaration or proposal form in connection with this policy or any policy of which this policy is a renewal or replacement; will be imputed to all **Insured Entities**.

General Provisions (continued)

5. **Other Insurance and Indemnification**

This policy shall always apply excess over any other valid and collectible insurance available to the **Insured** (including without limitation any policy specified in an endorsement to this policy), except with respect General Terms & Conditions Extension 5 'Legal Expenses Policy'.

With respect to **Outside Entities**, insurance provided by this policy applies excess over (i) any indemnification provided by an **Outside Entity**, and (ii) any other collectible insurance issued to an **Outside Entity** for the benefit of its directors, officers, or employees (including without limitation any **Outside Entity** insurance policy specified to the **Insurer**).

6. **Changes in Risk**

The **Insurer** shall not be liable for **Loss** or **Direct Financial Loss** arising out of, based upon or attributable to any:

- (i) act, error or omission committed or allegedly committed; or
- (ii) a matter which is the subject of an **Investigation**, extradition proceeding or **Asset and Liberty Proceeding**, occurring or arising;

after the effective date of a **Transaction**.

Cover shall only apply to an **Insured** for any covered acts, errors or omissions occurring after that date on which such **Insured** became a covered **Insured**. Cover for any **Plan** that was transferred, spun-off or terminated prior to or during the **Policy Period** shall only apply to covered acts, errors or omissions occurring prior to the date such **Plan** was transferred, spun-off or terminated.

7. **Individual Terminations**

Cover under Policy Section 2 - Corporate Liability Cover 2 'Accidental Death' and Extension 7 'Disappearance of Insured Executive' will immediately terminate during the **Policy Period** in the event that the **Insured Executive**:

- (i) resigns or is dismissed from the board of the **Policyholder**; or
- (ii) attains the age of 70 years.

8. **Notice and Authority**

The **Policyholder** shall act on behalf of its **Subsidiaries** and each and every **Insured** with respect to the giving of notice of any **Claim** or **Direct Financial Loss**, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a **Discovery Period**.

9. **Assignment**

This policy nor any right hereunder may be assigned without the prior written consent of the **Insurer**.

10. **Governing Law**

Any interpretation of this policy or issue relating to its construction, validity or operation shall be determined by the laws of the Commonwealth of Australia and the Australian State or Territory in which the policy is issued. Except as otherwise provided herein, the parties will submit to the exclusive jurisdiction of the Australian courts.

11. **Headings and Titles and Other References**

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this policy. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in **bold** typeface shall have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them. References to legislation shall include any subsequent amendments or re-enactments thereof and the equivalent legislation in other jurisdictions. All references to titles and positions shall mean the equivalent in other jurisdictions. A reference herein to "this policy" shall mean a reference only to those Insurance Covers stated herein which are shown on the schedule as purchased.

General Provisions (continued)

12. *Confidentiality*

The **Insureds** shall make all reasonable efforts not to disclose the existence of this policy to any person except to professional advisers or as required by law or court order and shall only state within the **Company's** annual report that the **Company** has agreed, or otherwise, to pay a premium for this policy but shall not publish the nature of the liability covered by this policy, the name of the **Insurer**, the **Limit of Liability** or the premium paid for this policy.

- end -

Appendix I – BusinessGuard Advisory Panel Contacts

NSW

Gilchrist Connell

<http://www.gcllegal.com.au>

Stephen Connell (02) 8240 8001

HWL Ebsworth

<http://hwlebsworth.com.au>

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Lander & Rogers

<http://www.landars.com.au>

Mark Williams (02) 9233 5092

Lee & Lyons

<http://www.leeandlyons.com.au>

David Lee (02) 8273 8000

Sparke Helmore

<http://www.sparke.com.au>

John Coorey (02) 9260 2461

Wotton & Kearney

<http://www.wottonkearney.com.au>

Phillip Wotton (02) 9236 9511

QLD

Carter Newell

<http://www.carternewell.com>

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Minter Ellison

<http://www.minterellison.com>

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SA

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TAS

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<http://hwlebsworth.com.au>

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Lander & Rogers

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