



KEYSTONE

**Directors and Officers Liability
Insurance Policy
Wording**

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Wording

The **Insured** and **Keystone** agree that **Keystone** will provide insurance in accordance with the terms of this **Policy** upon payment of the **Premium** as shown in the **Schedule**, and upon submission by the **Insured** of the **Proposal**, the contents on which **Keystone** will rely.

1. Definitions

- 1.1 Asset and Liberty Protection Costs** means reasonable and necessary fees, costs, charges and expenses incurred with **Keystone's** prior written consent (such consent not to be unreasonably withheld) by an **Insured Person** in defending a **Deprivation of Asset and Liberty Proceeding** against such **Insured Person**.
- 1.2 Change in Control** means any one of the following events:
- 1.2.1** the **Principal Insured** consolidates or merges with, or sells all or substantially all its assets to, a person, entity or group of persons or entities acting in concert; or
 - 1.2.2** the **Principal Insured** becomes a subsidiary of another entity or becomes controlled by another entity; or
 - 1.2.3** an administrator, receiver, provisional liquidator or liquidator is appointed to the **Principal Insured**.
- 1.3 Civil or Bail Bond Expenses** means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the **Insured Person** by a civil or criminal court in connection with any covered **Claim**, and excluding any form of actual security or collateral itself.
- 1.4 Claim** means any written or oral demand or civil proceeding, criminal proceeding, or administrative or regulatory proceeding first made or brought against an **Insured Person** and reported to **Keystone** during the **Period of Insurance**, alleging a **Wrongful Act** which may result in the payment of any amounts insured. All **Claims** attributable to one source or originating cause shall be deemed to be a single **Claim**.
- 1.5 Confidential Information** means all information intended by the **Insured** to remain confidential which is available to **Insured Persons** including but not limited to:
- 1.5.1** the existence or status of any discussions or negotiations taking place concerning any business purpose; or
 - 1.5.2** any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; or
 - 1.5.3** any information or analysis derived from **1.5.1** or **1.5.2** above.
- Confidential Information** shall not include any information that:
- 1.5.4** is or becomes generally available to the public (other than as a result of its unauthorised disclosure by the **Insured**); or
 - 1.5.5** was available to a recipient on a non-confidential basis prior to disclosure by the **Insured**;
or
 - 1.5.6** was lawfully in the possession of the recipient before the information was disclosed to it;
or
 - 1.5.7** the relevant parties agree in writing is not confidential or may be disclosed; or
 - 1.5.8** is developed by or for the recipient independently of the information disclosed; or
 - 1.5.9** is trivial, obvious or useless.
- 1.6 Costs and Expenses** means:
- 1.6.1** all reasonable legal fees, legal costs and other expenses incurred by or on the **Insured's** behalf, with **Keystone's** prior consent, in the investigation, defence or settlement of any **Claim**; and
 - 1.6.2** the costs of obtaining **Senior Counsel's** advice or determination under this **Policy**.

Costs and Expenses does not include salaries, wages, allowances, travel or accommodation expenses incurred by the **Insured** in assessing, investigating, dealing with and assisting others to deal with any **Claim**.

- 1.7 **Data** means machine-readable information in digital format (excluding software) irrespective of the way it is used or rendered, including but not limited to text, voice recordings and images.
- 1.8 **Deprivation of Asset and Liberty Proceeding** means a proceeding brought against an **Insured Person** by an **Official Body**, resulting directly from or as part of a covered **Claim** or **Management Inquiry**, seeking an order for:
- 1.8.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **Insured Person**; or
 - 1.8.2 a charge over real property or personal assets of such **Insured Person**; or
 - 1.8.3 a temporary or permanent prohibition on or disqualification of such **Insured Person** from holding the office of or performing the function of a director or officer (or equivalent) of any entity or from managing a company; or
 - 1.8.4 the restriction of such **Insured Person's** liberty to a specified domestic residence or official detention; or
 - 1.8.5 a prohibition on such **Insured Person** departing from a country; or
 - 1.8.6 the deportation of such **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.
- 1.9 **Director** means a person who is:
- 1.9.1 appointed to the position of director of the **Insured Organisation**; or
 - 1.9.2 appointed to the position of an alternate director of the **Insured Organisation** and is acting in that capacity; or
 - 1.9.3 not validly appointed as a director of the **Insured Organisation** but acts in the position of a director of the **Insured Organisation**.
- 1.10 **Employee** means a person who is employed by the **Insured Organisation** including any full time, part time or casual employee. **Employee** does not include **Directors**, consultants, independent contractors, secondees to or agents of the **Insured Organisation** or their respective employees (including the employees of labour-hire companies).
- 1.11 **Employment Wrongful Act** means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:
- 1.11.1 employment related:
 - 1.11.1.1 sexual or other unlawful harassment (including bullying); and/or
 - 1.11.1.2 unlawful discrimination; and/or
 - 1.11.1.3 denial of natural justice; and/or
 - 1.11.1.4 defamation; and/or
 - 1.11.1.5 invasion of privacy; and/or
 - 1.11.2 unlawful termination of employment; and/or
 - 1.11.3 false or misleading advertising or representation involving terms or conditions of employment; and/or
 - 1.11.4 failure to employ, promote or grant tenure; and/or
 - 1.11.5 unfair deprivation of career opportunity; and/or
 - 1.11.6 unfair discipline or evaluation of employment performance; and/or
 - 1.11.7 failure to provide or adhere to adequate employment policies or procedures; and/or
 - 1.11.8 violation of any federal, state or local statute or regulation governing employment practices; and/or
 - 1.11.9 breach of employment contract, with respect to any natural person, who was, now is or becomes an **Employee** or **Director** of the **Insured** including prospective employees or directors.
- 1.12 **Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

- 1.13 Environmental Reporting Breach** means:
- 1.13.1** any actual or alleged misrepresentation or failure to provide written disclosure of information relating to climate change. Such written disclosure includes but is not limited to any mandatory **Greenhouse Gas Inventory** or similar document issued by the **Insured**; and
- 1.13.2** it does not include any actual or alleged act, error or omission allegedly committed in connection with the provision of professional services to a third party, including any actual or alleged breach of any contract for the provision of professional services and/or advice to such third party by an **Insured**.
- 1.14 Excess** means the amount specified in the **Schedule** for the type of cover specified.
- 1.15 External Administrator** means any liquidator, receiver, receiver and manager, administrator, controller or holder of similar office or position in any jurisdiction whether appointed under the provisions of Part 5 of the *Corporations Act 2001 (Cth)* or any other law in a **Foreign Jurisdiction**.
- 1.16 Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation resulting directly from another **Claim** (other than an **Extradition Claim**) that is covered under this **Policy**.
- 1.17 Extradition Claim** means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the *Extradition Act 1988 (Cth)* or any replacement legislation in Australia or similar legislation in any **Foreign Jurisdiction**.
- 1.18 Extradition Costs** mean reasonable fees, costs, charges and expenses incurred, with **Keystone's** prior written consent (such consent not to be unreasonably withheld or delayed) resulting solely from:
- 1.18.1** an **Insured Person** lawfully:
- 1.18.1.1** opposing, challenging, resisting or defending any **Extradition Claim**; or
- 1.18.1.2** appealing any order or other grant of **Extradition** of that **Insured Person**; or
- 1.18.1.3** seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;
- 1.18.2** the appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant retained by the **Insured Person** exclusively and directly in connection with the **Extradition** of that **Insured Person**; or
- 1.18.3** travel and accommodation costs and living away from home expenses incurred by the **Insured Person**, his/her lawful spouse or domestic partner and any children under the age of eighteen (18), directly in connection with the **Extradition** of such **Insured Person**.
- 1.19 Extranet** means a restricted-access group of inter-connected networks accessible via a gateway or portal.
- 1.20 Fair Trading Legislation** means the *Fair Trading Act 1987 (NSW)*, or the *Fair Trading Act 1985 (Vic)* or similar legislation enacted by the other states or territories of Australia.
- 1.21 Financial Impairment** means the status of the **Insured Organisation** resulting from:
- 1.21.1** the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator, statutory manager or similar official to take control of, supervise, manage or liquidate the **Insured Organisation**; or
- 1.21.2** the appointment by or on behalf of the **Insured Organisation** of administrators; or
- 1.21.3** the **Insured Organisation** being placed into receivership or liquidation.
- 1.22 Foreign Jurisdiction** means any jurisdiction other than Australia.
- 1.23 Greenhouse Gases** means those gases defined by applicable law as a greenhouse gas including but not limited to carbon dioxide (CO²), methane (CH⁴), nitrous oxide (N₂O), fluorinated gases and high global warming potential gases.
- 1.24 Greenhouse Gas Inventory** means the accounting of the amount of **Greenhouse Gases** emitted into the atmosphere over a specific period by the **Insured**.

- 1.25 Industrial Instrument** means:
- 1.25.1** an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute; or
- 1.25.2** any other collective agreement, which regulates the terms and conditions of employment.
- 1.26 Insured** means the **Insured Organisation** and the **Insured Persons**.
- 1.27 Insured Organisation** means the **Principal Insured** and its **Subsidiaries**.
- 1.28 Insured Person** means any past, present or future **Director, Officer** or **Employee** of the **Insured Organisation**.
- Insured Person** does not include any professional consultants, service providers, auditors, receivers, managers, liquidators, administrators, trustees, mortgagees in possession or the like, or any employees of such persons or entities.
- An **Employee** is only included under the Definition of **Insured Person**:
- 1.28.1** while acting in a managerial or supervisory capacity in the **Insured Organisation**; or
- 1.28.2** with respect to a **Claim** or **Management Inquiry** alleging an **Employment Wrongful Act**; or
- 1.28.3** where named as a co-defendant with a **Director** or **Officer** of the **Insured Organisation** in a **Claim** or **Management Inquiry** in which such **Employee** is alleged to have participated or assisted.
- 1.29 Internet** means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.
- 1.30 Internet Liability Breach** means the actual or alleged disparagement, defamation of or harm to the reputation or character of any natural person or organisation, by an **Insured Person** directly resulting from:
- 1.1.1** communications which utilise the **Internet**; or
- 1.1.2** media services utilising the **Internet**,
via an electronic network owned and controlled by the **Insured**.
- Internet Liability Breach** does not include:
- 1.1.3** any actual or alleged infringement of intellectual property rights of any third party;
- 1.1.4** any failure by omission of the **Insured** to remove any statement or publications from any **Internet, Intranet** or **Extranet** site following a complaint or notice in relation to such a statement or publication from any third party; or
- 1.1.5** any statement or publication by an **Insured Person** or third party made to or contained on any **Open Site** or **Moderated Site**.
- 1.31 Intranet** means an electronic network owned and controlled by the **Insured** which contains information about the business of the **Insured** and is only accessible to designated individuals including **Employees** of the **Insured** and not to the general public.
- 1.32 Keystone** means Keystone Underwriting Pty Ltd ABN 78 601 944 763 as Corporate Authorised Representative (No. 000468712) of Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFSL 518224 which is acting on behalf of **Underwriters**.
- 1.33 Limit of Liability** means the amount specified in the **Schedule** as applying to a Cover of this **Policy**.
- 1.34 Management Inquiry** means any administrative or regulatory proceeding, official investigation, inquiry or hearing into the affairs of the **Insured** by an **Official Body** which an **Insured Person** is legally required to attend, where findings from such proceeding, investigation, inquiry or hearing could lead to a **Claim** being made against an **Insured Person**.
- 1.35 Moderated Site** means any **Internet, Intranet** or **Extranet** site where content is checked for compliance with pre-set content standards before or as soon as reasonably practicable after it is published.
- 1.36 Non-Indemnifiable Loss** means any amount which an **Insured Person** becomes legally liable to pay but an **Insured Organisation** is unable to indemnify due to:

- 1.36.1 legal prohibition; or
 1.36.2 a prohibition in the Articles of Association, charter, bylaws, contract or similar documents of such **Insured Organisation**; or
 1.36.3 insolvency under the *Corporations Act 2001 (Cth)* or the equivalent law in any foreign jurisdiction.
- 1.37 **Officer** means a person (including any company secretary) who:
 1.37.1 makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **Insured Organisation**; and/or
 1.37.2 is concerned in, or takes part in, the management of the **Insured Organisation**; and/or
 1.37.3 is a member of a committee of the **Insured Organisation** including any compliance, investment or audit committee, but only whilst he/she is a member of any such committee and only in relation to the performance of his/her duties as a committee member.
- 1.38 **Official Body** means:
 1.38.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or **External Administrator** legally empowered to conduct a **Management Inquiry** into the affairs of the **Insured Organisation**, or the conduct of an **Insured Person** in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; or
 1.38.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell **Securities**.
- 1.39 **Open Site** means any **Internet**, **Intranet** or **Extranet** site on which content can be published by any party without registration.
- 1.40 **Outside Entity** means any entity that is not a **Subsidiary**. It does not include any entity:
 1.40.1 which is a financial or credit institution, bank, clearing house, undertaking for the investment of securities, investment firm, adviser or manager, investment or mutual fund, private equity or venture capital company, stock brokerage firm, insurance company or similar entity; or
 1.40.2 which is a pharmaceutical, biotechnology or similar entity; or
 1.40.3 which is an information technology or similar entity.
- 1.41 **Period of Insurance** means the period specified in the **Schedule**, unless terminated earlier.
- 1.42 **Personal Reputation Crisis** means any negative statement specifically regarding and referencing an **Insured Person** that is included in any press release or published in any print or electronic media outlet in respect of a **Claim**. A personal reputation crisis shall be deemed to be made against an **Insured Person** when such press release or such publication was first released or syndicated to a **Third Party**.
- 1.43 **Personal Expenses** means housing, utilities, personal insurances and schooling expenses paid on behalf of an **Insured Person** directly to the provider of such services in the event of an interim or interlocutory order during the **Period of Insurance** for:
 1.43.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such **Insured Person**; or
 1.43.2 a charge over real property or personal assets of such **Insured Person**, resulting directly from or as part of a covered **Claim** and provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.
- Such expenses will be payable from thirty (30) days following the order described above for a period of twelve (12) months from the date of the order.
- 1.44 **Personal Reputation Protection Expenses** means the reasonable fees, costs, charges and expenses incurred, by a public relations firm or consultant, crisis management firm (which shall not be a law firm), which an **Insured Person** in the reasonable exercise of his or her discretion may engage with **Keystone's** written consent (such consent not to be unreasonably withheld) to prevent or limit adverse effects of or negative publicity in respect of a **Personal Reputation Crisis**.
- 1.45 **Policy** means the **Schedule**, the terms of this document and any **Endorsement**.

- 1.46 Pollutants** means any solid, liquid, gaseous, biological, radiological, nuclear, radioactive, or thermal irritant or contaminant whether occurring naturally or otherwise, including but not limited to fumes, acids, alkalis, smoke, vapour, soot, fibres, nuclear or radioactive material of any sort, chemicals, or waste materials.
- 1.47 Premium** means the amount specified in the **Schedule**.
- 1.48 Principal Insured** means the **Insured** or if more than one insured, the first entity listed as the 'Insured' in the **Schedule**.
- 1.49 Proposal** means the written proposal or declaration made by the **Insured** to **Keystone** containing particulars and statements together with other information provided by the **Insured**.
- 1.50 Prosecution Costs** mean the reasonable professional fees, costs, charges and expenses incurred with **Keystone's** prior written consent (such consent not to be unreasonably withheld), by an **Insured Person** in bringing a proceeding to obtain:
- 1.50.1** a declaration and/or injunction to oppose any **Deprivation of Asset and Liberty Proceeding**; or
- 1.50.2** the discharge or revocation of an order arising from a **Deprivation of Asset and Liberty Proceeding**; or
- 1.50.3** a finding that an **Official Body** is acting beyond its powers or is in breach of the rules of natural justice in conducting a **Management Inquiry**.
- 1.51 Retroactive Date** means the date specified in the **Schedule**.
- 1.52 Schedule** means the current schedule issued by **Keystone** to the **Insured**.
- 1.53 Securities** means any equity securities, debt securities or derivatives.
- 1.54 Senior Counsel** means a Senior Counsel to be mutually agreed upon by **Keystone** and the **Insured** or, in the absence of agreement, to be appointed by the current President of the Law Society in the Australian State or Territory in which this **Policy** is issued.
- 1.55 Statutory Costs and Expenses** means the reasonable and necessary costs and expenses incurred by the **Insured** with **Keystone's** prior written consent (which shall not be unreasonably withheld) in challenging the imposition of a pecuniary penalty.
- Statutory Costs and Expenses** does not include the **Insured's** salaries, wages, fees, allowances, travel and accommodation expenses.
- 1.56 Subsidiary** means any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which this **Policy** is issued:
- 1.56.1** was a subsidiary of the **Principal Insured** prior to the commencement of the **Period of Insurance**; or
- 1.56.2** is a subsidiary of the **Principal Insured** at the commencement of the **Period of Insurance**.
- Cover for any such company applies only to **Wrongful Acts** whilst the company was or is a **Subsidiary** of the **Principal Insured**.
- 1.57 Superannuation Guarantee Charge** means an **Insured Person's** personal obligation to pay a superannuation guarantee charge to the Australian Taxation Office pursuant to Section 5 of the *Superannuation Guarantee Charge Act 1992 (Cth)*.
- 1.58 Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.
- 1.59 Third Party** means any person or entity other than an **Insured**.
- 1.60 Underwriters** means certain Underwriters at Lloyd's participating in this contract of insurance.
- 1.61 Wrongful Act** means any:
- 1.61.1** act or omission of an **Insured Person** in his or her capacity as a **Director** or **Officer**; or

1.61.2 matter claimed against an **Insured Person** solely because of his or her status as a **Director** or **Officer**.

Wrongful Act includes any **Employment Wrongful Act** but it does not include any other act or omission committed or allegedly committed against an **Employee**.

2. Insuring Clauses

Directors and Officers Liability

2.1 **Keystone** will indemnify an **Insured Person** against liability the **Insured Person** incurs for a **Claim** alleging a **Wrongful Act** unless the **Insured Person** has been indemnified by the **Insured Organisation** for such liability.

Company Reimbursement

2.2 **Keystone** will pay on behalf of the **Insured Organisation** the amount of the indemnity referred to in Insuring Clause 2.1 *Directors and Officers Liability*, if the **Insured Organisation** is legally required or permitted to indemnify the **Insured Person** for such liability.

Advance Payment of Costs and Expenses

2.3 **Keystone** will pay for **Costs and Expenses** in respect of a **Claim** covered under Insuring Clauses 2.1 *Directors and Officers Liability*, 2.2 *Company Reimbursement* or any applicable Extension. **Keystone** will pay for these **Costs and Expenses** as and when they are incurred prior to the final resolution of the **Claim**.

2.4 Each **Insured** shall repay to **Keystone** all payments of **Costs and Expenses** incurred on that **Insured's** behalf if and to the extent it is established that such **Costs and Expenses** are not insured.

2.5 **Costs and Expenses** are subject to the applicable **Excess** and shall form part of the **Limit of Liability**.

3. Extensions

Keystone further agrees to extend cover subject to all the terms, conditions and exclusions, including all definitions of this **Policy**, as follows:

Additional Excess Limit for Non-Indemnifiable Loss

3.1 **Keystone** will pay to or on behalf of each **Director** of any **Insured Organisation** or **Subsidiary**, subject to the Aggregate Excess Limit specified in the **Schedule**, **Non-Indemnifiable Loss** up to the Individual Additional Excess Limit specified in the **Schedule**, provided that the following are exhausted first:

3.1.1 the **Limit of Liability**; and

3.1.2 any other valid and collectible insurance policy which covers any part of that **Loss**; and

3.1.3 all other indemnification available to any **Director** of the **Company** or **Subsidiary**;

3.2 The Individual Additional Excess Limit specified in the **Schedule** is part of and not in addition to the Aggregate Excess Limit specified in the **Schedule**;

3.3 The Aggregate Excess Limit specified in the **Schedule** is **Keystone's** maximum aggregate liability under this Extension for all **Directors** irrespective of the number of, the amount claimed, or the number of **Directors** who claim. The Aggregate Excess Limit specified in the **Schedule** is in addition to, and not part of, the **Limit of Liability**;

Continuous Cover

3.4 Exclusion 5.12 to 5.16 *Prior Matters* will not apply to the notification of a **Claim** or **Management Inquiry** if the **Insured** was aware of any facts that might give rise to a **Claim** or **Management Inquiry** prior to the commencement of the **Period of Insurance** and had not notified **Keystone** of such facts prior to the commencement of the **Period of Insurance**, provided that:

3.4.1 **Keystone** was the **Insured's** directors' and officers' liability insurer at the time that the **Insured** first became aware of the circumstance and **Keystone** have continued to be the **Insured's** directors' and officers' liability insurer; and

- 3.4.2 the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**; and
- 3.4.3 **Keystone** will reduce its liability to the extent of any prejudice suffered because of the **Insured's** failure to notify such facts prior to the commencement of the **Period of Insurance**; and
- 3.4.4 the **Limit of Indemnity** under this Extension shall be the lesser available under the terms of the policy in force at the time that the **Insured** first became aware of the circumstance and this **Policy**. The terms of this **Policy** will otherwise apply;

Cyber Privacy and Confidentiality

- 3.5 **Keystone** will pay on behalf of the **Insured** the costs and expenses incurred by an **Insured Person** with **Keystone's** prior written consent (which shall not be unreasonably withheld) in respect of any **Claim** or **Management Inquiry** as a direct result of:
 - 3.5.1 any invasion, infringement or interference with any right to privacy or of publicity, including any disclosure of **Data** which amounts to a breach of the relevant legislation;
 - 3.5.2 any unauthorised disclosure or use of any **Confidential Information** in **Data** form or information in **Data** form which is subject to statutory restriction on its disclosure or use;
- 3.6 **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**;

Emergency Costs and Expenses

- 3.7 the **Insured** is entitled to incur **Costs and Expenses** and **Management Inquiry** costs and expenses up to ten percent (10%) of the **Limit of Liability** without **Keystone's** prior written consent until such notice can reasonably be expected to be given to **Keystone** in the event that the **Insured** is not able to notify **Keystone** of a **Claim** or **Management Inquiry** in accordance with Claims Condition 6.9 to 6.10 *Notification of Claims and Co-operation*, and notwithstanding Claims Condition 6.6 to 6.7 *Defence and Settlement*, Extension 3.18 to 3.19 *Management Inquiries* and Definition 1.6 **Costs and Expenses**;

Environmental Reporting Breach

- 3.8 **Keystone** will pay on behalf of the **Insured** the costs and expenses incurred by an **Insured Person** with **Keystone's** prior written consent (which shall not be unreasonably withheld) in respect of any **Claim** or **Management Inquiry** first made during the **Period of Insurance** arising from an **Environmental Reporting Breach**;

Extended Reporting Period

- 3.9 the **Principal Insured** may request an extended reporting period under of up to 84 months commencing from the end of the **Period of Insurance** if a **Change in Control** occurs during the **Period of Insurance** during which time the **Insured** may notify to **Keystone**:
 - 3.9.1 any **Claim**, provided it results from a **Wrongful Act**; or
 - 3.9.2 any **Management Inquiry**, provided it results from conduct committed or allegedly committed, prior to the effective date of the **Change in Control**;
- 3.10 the **Principal Insured** must request this extended reporting period in writing before the end of the **Period of Insurance**. **Keystone** will offer this extended reporting period on such terms and conditions and for such additional premium as **Keystone** may reasonably impose;
- 3.11 an extended reporting period granted under this Extension will be non-cancellable and any additional premium paid will be non-refundable;
- 3.12 this Extension is subject to the **Maximum Aggregate Limit of Liability**, **Limit of Liability**, sub-limits and **Excess** and does not apply if this **Policy** is cancelled or avoided by **Keystone**;

Former Directors and Officers

- 3.13 if a **Change in Control**:
 - 3.13.1 occurs during the **Period of Insurance** and the **Principal Insured** does not purchase the extended reporting period offered under Extension 3.9 to 3.12 *Extended Reporting Period* or purchase the same or similar cover from another insurer or insurers, then **Keystone** will provide an extended reporting period of 84 months following the effective date of the **Change**

in **Control**, but only for the benefit of those **Insured Persons** who resigned from the **Insured Organisation** at least six (6) months prior to the effective date of the **Change in Control**; or
3.13.2 does not occur during the **Period of Insurance** and at the end of the **Period of Insurance** the **Principal Insured** does not renew this **Policy** with **Keystone** or replace this **Policy** with one or more policies providing directors' and officers' liability cover issued by another insurer or insurers, then **Keystone** agrees to provide an extended reporting period of 84 months following the end of the **Period of Insurance**, but only for the benefit of those **Insured Persons** who resigned from the **Insured Organisation** at least six (6) months prior to the end of the **Period of Insurance**;

3.14 the **Insured Persons** referred to in **3.13.1** or **3.13.2** above will be entitled to notify **Keystone** of any **Claim** or **Management Inquiry** covered during such extended reporting period provided such **Claim** or **Management Inquiry** results from a **Wrongful Act** whilst they were a **Director, Officer** or **Employee** of the **Insured Organisation**;

Insured Persons' Protection Cover

3.15 **Keystone** will pay on behalf of the **Insured** the costs and expenses incurred by an **Insured Person** with **Keystone's** prior written consent (which shall not be unreasonably withheld) solely for the benefit of that **Insured Person** for any:

3.15.1 **Asset and Liberty Protection Costs** and **Prosecution Costs**; or

3.15.2 **Extradition Costs** which arise from any **Extradition Claim** made against such **Insured Person**; or

3.15.3 **Personal Expenses**; and

3.15.4 **Personal Reputation Protection Expenses** arising from a **Personal Reputation Crisis**; and

3.15.5 **Civil or Bail Bond Expenses**.

3.16 **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**;

Internet Liability Breach

3.17 **Keystone** will pay on behalf of the **Insured** the costs and expenses incurred by an **Insured Person** with **Keystone's** prior written consent (which shall not be unreasonably withheld) in respect of any **Claim** or **Management Inquiry** first made during the **Period of Insurance** arising from an **Internet Liability Breach**;

Management Inquiries

3.18 **Keystone** will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by an **Insured Person** (but excluding the **Insured Person's** salaries, wages, fees, allowances, travel and accommodation expenses) in preparing for and attending a **Management Inquiry** provided that:

3.18.1 such costs and expenses were incurred with the prior written consent of **Keystone** (which consent shall not be unreasonably withheld); and

3.18.2 the notice requiring the **Insured Person** to attend the **Management Inquiry** is first served upon the **Insured Person** and reported to **Keystone** during the **Period of Insurance**;

3.19 the **Insured** shall repay to **Keystone** all payments of **Management Inquiry Costs and Expenses** incurred on that **Insured's** behalf if and to the extent it is established that such **Management Inquiry Costs and Expenses** are not insured under this **Policy**;

New Subsidiaries

3.20 Definition **1.56 Subsidiary** is extended to include any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which this **Policy** is issued, becomes a subsidiary of the **Insured Organisation** during the **Period of Insurance** provided that:

3.20.1 the revenue of the new subsidiary for the 12 months preceding the date of its acquisition does not exceed 25% of the consolidated revenue of the **Insured Organisation** for the 12 months preceding the commencement of the **Period of Insurance** in the case of an acquisition; or

3.20.2 the new subsidiary is not incorporated in the United States of America or its territories or protectorates; or

3.20.3 the new subsidiary has no paid or incurred directors' and officers' liability claims against it for the five (5) years preceding the date of its acquisition;

3.21 **Keystone** will provide cover for a period of 45 days (but not beyond the end of the **Period of Insurance**) from the effective date of the new subsidiary being acquired or created where **3.20.1** to **3.20.3** would normally apply to that new subsidiary. **Keystone** will consider providing cover for the new subsidiary for a further period on such terms and conditions and for such additional premium as may be agreed, upon provision to **Keystone** by the **Insured Organisation** of full details of the new subsidiary;

3.22 cover of any such new subsidiary applies only to a **Wrongful Act** whilst the subsidiary is a subsidiary of the **Insured Organisation**;

Occupational Health and Safety Costs and Expenses

3.23 **Keystone** will pay on behalf of the **Insured** the **Costs and Expenses** which an **Insured Person** incurs in defending a **Claim** alleging any breach of any occupational health and safety legislation including legislation in respect of workplace manslaughter and industrial death, notwithstanding Exclusion **5.10 Personal Injury**;

3.24 **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**;

Outside Directorships

3.25 Definition **1.28 Insured Person** is extended to include any **Insured Person** acting in the capacity of a director or officer of an **Outside Entity** at the specific written request or written approval of the **Insured Organisation**. **Keystone** will indemnify the **Insured Person** against liability the **Insured Person** incurs in respect of a **Claim** alleging a **Wrongful Act** in his or her capacity as a director or officer of an **Outside Entity**;

3.26 cover provided under this Extension shall:

3.26.1 be specifically in excess of any indemnity or insurance available from or provided by the **Outside Entity** including any policies of the **Outside Entity** specified in the **Proposal** and any renewal or replacement of those policies; and

3.26.2 not apply to any **Claim** brought by the **Outside Entity** unless the **Claim** is a derivative action brought in the name of the **Outside Entity** by any legally authorised individual or entity including any regulatory authority where the individual or entity acts without any assistance, intervention, solicitation or active participation by the **Outside Entity** or by any **Insured**; and

3.26.3 not apply to a **Claim** arising out of the insolvency of the **Outside Entity**, or any inability of the **Outside Entity** to pay all or any of their debts as and when they fall due; and

3.26.4 not apply to an outside entity incorporated in the United States of America or its territories or protectorates; and

3.26.5 not apply to any **Outside Entity** listed on any stock exchange; and

3.26.6 not apply to any **Claim** brought by any other director, officer or employee of the **Outside Entity** unless the **Claim** alleges an **Employment Wrongful Act**; and

3.26.7 not extend to the **Outside Entity** in which the outside directorship is held or to any other director, officer or employee of such entity;

Pecuniary Penalties

3.27 **Keystone** will indemnify the **Insured Person** against pecuniary penalties (including fines) it is required to pay for contraventions of statutory civil penalty provisions and no fault criminal offences because of a **Claim**, notwithstanding Exclusion **5.8 to 5.9 Penalties and Punitive Damages**, provided that:

3.27.1 the pecuniary penalty is not imposed pursuant to law or legislation enacted by the United States of America or its territories or protectorates or in which the laws of the United States of America is applicable, even if only to a limited extent; and

3.27.2 the relevant regulatory authority first acts to impose the pecuniary penalty during the **Period of Insurance** and such action is reported to **Keystone** during the **Period of Insurance**; and

3.27.3 the **Insured Person** has complied with any lawful notice or direction received from, or any enforcement action taken by any appropriate regulatory authority under any statute within the time specified or, if no time is specified, within a reasonable time; and

3.27.4 **Keystone** will not pay for any pecuniary penalties in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;

3.28 notification under this Extension must be given to **Keystone** in accordance with Claims Condition *6.9.1 Notification of Claims and Co-operation* and the **Insured** must give **Keystone** such information and cooperation as it may reasonably require in accordance with Claims Condition *6.9.2 Notification of Claims and Co-operation*;

Period of Grace

3.29 the **Principal Insured** is entitled to an automatic extended reporting period of 30 days commencing from the end of the **Period of Insurance** if this **Policy** is neither renewed nor replaced by the **Principal Insured** with a policy or policies providing similar cover, during which time the **Insured** may notify to **Keystone** any **Claim** or **Management Inquiry** provided the **Claim** is first made against the **Insured** or the **Management Inquiry** is first notified to the **Insured** within the 30 days commencing from the end of the **Period of Insurance**;

Pollution Costs and Expenses

3.30 **Keystone** will pay on behalf of the **Insured Person** the **Costs and Expenses** which an **Insured Person** incurs in defending a **Claim** for or arising out of the actual or alleged discharge, dispersal, release or escape of any **Pollutant** notwithstanding Exclusion *5.11 Pollution*;

Public Relations Costs

3.31 **Keystone** will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by an **Insured Person** with **Keystone's** prior written consent (which shall not be unreasonably withheld) in seeking advice from a public relations consultant solely for the benefit of protecting the **Insured Person's** professional reputation because of a **Wrongful Act** which has or could reasonably lead to a **Claim** being made against the **Insured Person**;

3.32 **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**;

Shareholder Pollution Claims

3.33 **Keystone** will indemnify the **Insured Person** against liability the **Insured Person** incurs in respect of a **Claim** made directly or derivatively by any shareholder of the **Insured Organisation** alleging loss to the **Insured Organisation** or its shareholders for or arising out of any actual or alleged discharge, dispersal, release or escape of any **Pollutant** notwithstanding Exclusion *5.11 Pollution*;

3.34 cover provided under this Extension will not apply if:

3.34.1 prior to the commencement of the **Period of Insurance**, an **Insured Person** with managerial responsibilities over environmental affairs, control or compliance of the **Insured Organisation**, knew or could reasonably have suspected that there existed any situation, circumstance or **Wrongful Act** which could have given rise to a **Claim**; or

3.34.2 the **Claim** is brought in the United States of America or any of its territories or protectorates;

Spouses, Estates and Representatives

3.35 **Keystone** will cover:

3.35.1 in the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives; or

3.35.2 any **Claim** brought against the lawful spouse or domestic partner of an **Insured Person**, for a **Wrongful Act** by the **Insured Person**, as if the **Claim** had been brought against that **Insured Person**;

3.36 no cover is provided under this Extension for any actual or alleged act or omission by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner;

Tax Liability

- 3.37** Keystone will indemnify the **Insured Person** against personal liability the **Insured Person** incurs in respect of unpaid taxes of the **Insured Organisation** due to the **Insured Organisation's Financial Impairment**, except for any **Superannuation Guarantee Charge**, however, **Keystone** shall not cover any loss arising from the commission of an **Insured Person's** dishonest or fraudulent act or omission or any intentional violation or breach of any law or regulation;
- 3.38** **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**.

4. Optional Extensions

The following Extensions are subject to all the terms, conditions and exclusions, including all definitions of this **Policy** and shall apply only if they are specifically included in the **Schedule**.

Additional Limit for Non-Executive Directors

- 4.1** **Keystone** will pay under Insuring Clause *2.2 Company Reimbursement* in addition to the **Limit of Liability** for each non-executive **Director** if the **Limit of Liability** is exhausted due to the payment of amounts insured under this **Policy**. This is subject to the limits of liability available under any policy or policies in excess of this **Policy** having been exhausted.
- 4.2** **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**.

Employment Practices Liability

- 4.3** **Keystone** will indemnify the **Insured Organisation** against civil liability the **Insured Organisation** incurs in respect of a **Claim** alleging an **Employment Wrongful Act**.
- 4.4** No cover is provided for any:
- 4.4.1** responsibilities, obligations or duties in respect of any superannuation fund, profit sharing programme or other employee benefits programme; or
 - 4.4.2** obligation or breach of obligation providing for or under:
 - 4.4.2.1** paid or unpaid leave of any kind; or
 - 4.4.2.2** workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits or social security benefits; or
 - 4.4.2.3** redundancy or severance payments or entitlements; or
 - 4.4.2.4** any **Industrial Instrument** or contract of employment; or
 - 4.4.3** obligation or breach of obligation to give adequate or any notice of termination; or
 - 4.4.4** back pay, or any compensation or damages attributable to the back-payment of remuneration, where the **Insured Organisation** is ordered by the relevant court or tribunal to reinstate the claimant as an **Employee**; or
 - 4.4.5** front pay, future loss, future damages, future compensation or future economic relief, from the point in time that reinstatement was to occur, where the **Insured Organisation** is ordered by the relevant court or tribunal to reinstate the **Employee** but refuses or fails to do so; or
 - 4.4.6** stock, shares, stock options, share options or any entitlement or right under any equity plan of any description; or
 - 4.4.7** bonus or incentive payments, or any entitlement or right under a bonus or incentive plan; or
 - 4.4.8** costs incurred by the **Insured Organisation** regarding any educational, corrective, sensitivity or other programme, policy or seminar; or
 - 4.4.9** **Claim** brought by or on behalf of any natural person who had or has direct or beneficial ownership or control of 15% or more of the issued capital of the **Insured Organisation**; or
 - 4.4.10** any act or omission committed or allegedly committed or legal or regulatory proceedings brought outside the Commonwealth of Australia or New Zealand.

- 4.5 **Keystone's** total liability under this Extension will not exceed the amount indicated in the **Schedule** during the **Period of Insurance** and all payments will be part of and not in addition to the **Limit of Liability**.

5. Exclusions

Keystone will not pay for any amounts based upon, arising out of, in connection with, or attributable to:

Consensual Claims

- 5.1 any **Claim** which is brought with the assistance, intervention, solicitation or active participation of the **Insured** against whom it is brought unless the **Insured** is legally required to assist, intervene, solicit or participate in the **Claim**;

Cyber Publication Exclusion

- 5.2 any omission of the **Insured** to remove publications from any **Internet, Intranet** or **Extranet** following a complaint or notice in relation to the publication from any third party; or
- 5.3 any publication made to an **Open Site** by an **Insured Person** or third party;

Fraud and Dishonesty

- 5.4 any fraudulent, wilful, grossly reckless, malicious or dishonest conduct or criminal act including any intentional breach of any law or regulation committed by the **Insured**; or
- 5.5 any **Claim** arising directly or indirectly from the gain of any personal profit, remuneration or advantage to which the **Insured Person** was not legally entitled including, but not limited to, profits made from the purchase or sale of the **Insured Organisation's Securities**.

Exclusion 5.4 to 5.5 will only apply where it is established by an admission of such **Insured** or by a final judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur;

Jurisdiction Limit

- 5.6 any **Claim** arising from any legal proceeding brought in any court of the United States of America or its territories or protectorates, or arising from any judgment registered or lodged in connection with such a legal proceeding or any **Management Inquiry** commenced, ordered, commissioned or conducted in the United States of America or its territories or protectorates;

Money Laundering

- 5.7 money laundering;

Penalties and Punitive Damages

- 5.8 any fines or other penalties; or
- 5.9 any exemplary, aggravated, multiple or punitive damages;

Personal Injury

- 5.10 death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person. This Exclusion does not apply to any **Claim** alleging emotional distress or mental anguish resulting from an **Employment Wrongful Act**;

Pollution

- 5.11 the actual, alleged or threatened discharge, release, or escape of **Pollutants**;

Prior Matters

- 5.12 any written or oral demand, legal proceedings or **Management Inquiry** made, threatened, intimated against or involving the **Insured** prior to the commencement of the **Period of Insurance**; or
- 5.13 any facts that, before the commencement of the **Period of Insurance**, the **Insured** was aware, or a reasonable person would have been aware, might give rise to a claim under this **Policy**; or
- 5.14 any facts that might give rise to a claim under this **Policy** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Period of Insurance**; or

5.15 any facts that might give rise to a claim under this **Policy** which have been disclosed to any insurer in any proposal for insurance before the commencement of the **Period of Insurance**; or

5.16 any facts that might give rise to a claim under this **Policy** which were disclosed to **Keystone** in the proposal;

Professional Services

5.17 the provision of or failure to provide professional services to a third party. However, this Exclusion will not apply to any **Claim** to the extent that the **Claim** is for failure to supervise;

Property Damage

5.18 loss of, damage to or destruction of any real or personal property or any consequential losses flowing from such loss, damage or destruction;

Radioactivity

5.19 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

Retroactive Date

5.20 any **Claim** or **Management Inquiry** directly or indirectly caused by, contributed to by, in connection with, or arising from any event or occurrence committed or alleged to have been committed prior to the **Retroactive Date**;

Sanctions

5.21 any **Claim** that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America;

Securities Offering

5.22 any **Claim** arising out of, based upon or attributable to the actual or intended public offering of any share capital of an **Insured Organisation**;

Terrorism

5.23 any act of **Terrorism**, or any action taken in controlling, preventing, suppressing or in any way relating to an act of **Terrorism**;

Uninsurable Amounts

5.24 amounts uninsurable at law;

War

5.25 war, invasion, acts of foreign enemies, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by, or under the order of, any government or public or local authority.

6. Claims Conditions

Allocation

6.1 The **Insured** and **Keystone** will use their best efforts to agree upon a fair and proper allocation of amounts insured under this **Policy** which relate solely to what is covered under this **Policy** in the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this **Policy**.

6.2 A **Senior Counsel** shall determine, as an expert but not an arbitrator, a fair and proper allocation if an agreement cannot be reached. **Keystone** may, in its absolute discretion, pay such amounts insured under this **Policy** as it considers appropriate until **Senior Counsel** has made his or her determination.

Challenging Pecuniary Penalties

6.3 **Keystone** will pay **Statutory Costs and Expenses** if **Keystone** is satisfied that the **Insured Person** in accordance with Extension [3.27](#) and [3.28 Pecuniary Penalties](#), has reasonable prospects of reducing the amount of any pecuniary penalty or avoiding its imposition altogether,

and that having regard to the amount of **Statutory Costs and Expenses** likely to be incurred in doing so, it is reasonable to challenge the imposition of the pecuniary penalty.

- 6.4** The **Insured** and **Keystone** will use their best efforts to agree upon whether it is reasonable to challenge the imposition of the pecuniary penalty. **Senior Counsel** shall determine, as an expert but not an arbitrator, whether it is reasonable to challenge the imposition of the pecuniary penalty if an agreement cannot be reached. **Keystone** may, in its absolute discretion, pay such **Statutory Costs and Expenses** as it considers appropriate until **Senior Counsel** has made his or her determination.
- 6.5** The **Insured** may elect to challenge the imposition of the pecuniary penalty if **Senior Counsel** recommends that the pecuniary penalty should be paid and the **Insured** does not agree that the pecuniary penalty should be paid. **Keystone** will pay the pecuniary penalty if the **Insured** is not successful, but not the **Statutory Costs and Expenses**. **Keystone** will pay the **Statutory Costs and Expenses** only if the **Insured** is successful.

Defence and Settlement

- 6.6** **Keystone** may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.
- 6.7** The **Insured** must:
- 6.7.1** take all reasonable steps to mitigate loss; and
 - 6.7.2** not agree to any waiver, limitation or delay as to their legal rights of recovery against any other party; and
 - 6.7.3** not admit liability, however this does not apply to a notification to ASIC in accordance with section 912D of *Corporations Act 2001 (Cth)* or APRA in accordance with section 29JA of the *Superannuation Industry (Supervision) ACT 1993 (Cth)*; and
 - 6.7.4** not negotiate any settlement, enter into any settlement agreement or incur any **Costs and Expenses** or **Statutory Costs and Expenses** without the prior written consent of **Keystone** (which shall not be unreasonably withheld); and
 - 6.7.5** give **Keystone** all the information and assistance that **Keystone** requires to investigate:
 - 6.7.5.1** the cause and consequences of any **Claim**; and
 - 6.7.5.2** the **Insured's** liability to any party in respect of any **Claim**; and
 - 6.7.5.3** whether **Keystone** has any liability to the **Insured** under this **Policy** and, if so, the extent of its liability; and
 - 6.7.6** where applicable, conduct the defence of any **Claim**.

Foreign Currency

- 6.8** Any payments made or **Costs and Expenses** incurred in a currency other than Australian dollars shall be converted to and paid in Australian dollars based upon the rate of exchange published by the Reserve Bank of Australia on the date that the payments were made or **Costs and Expenses** were incurred, or the preceding date should they be incurred on a weekend or public holiday.

Notification of Claims and Co-operation

- 6.9** The **Insured** must, as soon as the **Insured** becomes aware of a **Claim** or **Management Inquiry** during the **Period of Insurance**:
- 6.9.1** notify **Keystone** in writing of the **Claim** or **Management Inquiry**; and
 - 6.9.2** give **Keystone** such information and co-operation as it may reasonably require including but not limited to:
 - 6.9.2.1** a description of the **Claim** or **Management Inquiry**; and
 - 6.9.2.2** the nature of the allegation; and
 - 6.9.2.3** the nature of the alleged or potential loss; and
 - 6.9.2.4** the names of actual or potential claimants; and
 - 6.9.2.5** the manner in which the **Insured** first became aware of the **Claim** or **Management Inquiry**.
- 6.10** The **Insured** must advise **Keystone** within a reasonable time of making a claim under this **Policy** if any amounts insured under this **Policy** are also potentially insured under any other insurance policy or policies, and provide **Keystone** with details of the other insurance.

Preservation of Right to Indemnity

6.11 **Keystone** will pay for the amounts insured under this **Policy** on behalf of the **Insured Person** if the **Insured Organisation** is legally required or permitted to indemnify any **Insured Person** for amounts insured under this **Policy** but fails or refuses to do so. The **Insured Organisation** will be required to pay to **Keystone** the **Excess** under Insuring Clause 2.3 to 2.5 *Advance Payment of Costs and Expenses* in such event.

Requirement to Contest a Claim

6.12 The **Insured** shall not be required to contest any **Claim** unless a **Senior Counsel** advises that such **Claim** should be contested. **Senior Counsel** shall take into consideration the economics of the matter (including potential amounts insured under this **Policy**) and the prospects of the **Insured** successfully defending the **Claim** in formulating such advice.

6.13 Where **Senior Counsel** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Keystone** shall not exceed the amount for which the **Claim** could have been settled plus **Costs and Expenses** incurred with **Keystone's** prior written consent up to the date of such election.

7. Conditions

Aggregation

7.1 Where:

7.1.1 more than one claim results from a single:

7.1.1.1 event or occurrence; or

7.1.1.2 act, error or omission,

those claims will be deemed by this **Policy** to be one **Claim** and **Keystone** will apply this Condition when determining the **Limit of Liability** available (including any sub-limits), and the **Excess** applicable to any **Claims**; or

7.2 For the purposes of Condition 7.1 *Aggregation*:

7.2.1 all causally connected acts, errors or omissions shall jointly constitute a single act, error or omission; and

7.2.2 a continuous or repeated exposure to substantially the same condition will constitute a single event or occurrence.

Assignment

7.3 This **Policy** cannot be assigned by the **Insured**.

Authorisation

7.4 The **Principal Insured** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Insured** for all purposes under this **Policy**, subject to Condition 7.25 *Severability and Non-Imputation*.

Cancellation

7.5 **Keystone** may only cancel this **Policy** pursuant to the *Insurance Contracts Act 1984 (Cth)*.

7.6 The **Principal Insured** may cancel this **Policy** at any time by giving written notice to **Keystone**.

7.7 **Keystone** may retain the pro rata proportion of the **Premium**. However, the **Premium** shall be regarded as fully earned and may be retained by **Keystone** if notification of a **Claim** or **Inquiry** which is covered under this **Policy**, or notification pursuant to the *Insurance Contracts Act 1984 (Cth)* is given by an **Insured** prior to cancellation.

Change in Control

7.8 This **Policy** will continue to provide cover if a **Change in Control** occurs during the **Period of Insurance**, but only in respect of **Wrongful Acts** prior to the effective date of the **Change in Control**.

Confidentiality

7.9 The existence and terms of this **Policy** will be confidential between the **Insured** and **Keystone** and will not be published, disclosed or otherwise communicated except where:

- 7.9.1 the law requires disclosure in the financial statements or annual reports of payment by the **Insured** of a premium in respect of a contract insuring persons against a liability; or
- 7.9.2 **Keystone** consent in writing to disclosure of the existence and/or terms of this **Policy**;
or
- 7.9.3 the **Insured** is compelled by order of a court to do so.

Consideration

- 7.10 The indemnity provided by **Keystone** under this **Policy** is in consideration of the payment of the **Premium**.
- 7.11 The **Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Keystone** by the due date. The due date is on or before thirty (30) days after the inception date of the **Period of Insurance** or such other time that **Keystone** agrees in writing. **Keystone** is entitled to cancel this **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)* if the **Insured** fails to pay the **Premium** by the due date.

Construction and Interpretation

- 7.12 Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.
- 7.13 Words denoting the singular include the plural and vice versa except where the context otherwise requires.

Endorsements

- 7.14 An **Endorsement** does not affect or increase the **Limit of Liability** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

Excess

- 7.15 **Keystone** will only pay in respect of a **Claim** and associated **Costs and Expenses** and other amounts insured, the amount which is above the **Excess**. The **Excess** which is applicable will depend on whether the **Insured Organisation** is legally required or permitted to indemnify the **Insured Person**. If it is, the **Excess** is the one applicable to Insuring Clause [2.2 Company Reimbursement](#) and will be the first amount borne by the **Insured Organisation** and will remain uninsured. If it is not, the **Excess** is the one applicable to Insuring Clause [2.1 Directors and Officers Liability](#).

Goods and Services Tax (GST)

- 7.16 **Keystone** will charge the **Insured** an amount for GST as part of the **Premium**. The **Insured** must inform **Keystone** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform **Keystone** of its entitlement or correct entitlement to an input tax credit. **Keystone's** liability to the **Insured** will be calculated considering any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition, despite the other terms of this **Policy**. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

Governing Law

- 7.17 This **Policy** will be governed in accordance with the law of the State or Territory of Australia in which this **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

Limit of Liability

- 7.18 The maximum amount payable by **Keystone** is the applicable **Limit of Liability**.
- 7.19 The **Limit of Liability** is inclusive of any **Costs and Expenses**, sub-limits (other than Optional Extension [4.1 and 4.2 Additional Limit for Non-Executive Directors](#)) and any other amounts insured under this **Policy** but does not include costs incurred by **Keystone** in determining whether the relevant part of this **Policy** provides insurance to the **Insured**.

Material Change

- 7.20** The **Insured** must notify **Keystone** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **Keystone** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on **Keystone's** assessment of any change in the risk insured by this **Policy**. A material change in the risk includes, without limitation:
- 7.20.1** activities that are materially different from those declared in the **Proposal**; or
 - 7.20.2** activities outside the normal activities of the **Insured**; or
 - 7.20.3** any loss of or Conditions imposed upon any licence or other authority required by the **Insured** to operate.
- 7.21** **Keystone** may at its election, instead of cancelling or avoiding this **Policy**, give notice in writing to the **Insured** that any **Claim** or **Management Inquiry** which has arisen or may arise which is related to such facts, activities or circumstances shall be excluded from indemnity under this **Policy** in the event of **Keystone** being at any time entitled to cancel or avoid this **Policy** because the **Insured** fails to give notice in accordance with Condition **7.20**.

Other Insurance

- 7.22** The **Insured** shall promptly give to **Keystone** full details of any other insurance, including the identity of the insurer and the policy number, and such further information as **Keystone** may reasonably require if at the time any **Claim** or **Management Inquiry** arises under this **Policy** there is any other insurance in force covering the same liability.

Order of Payments

- 7.23** **Keystone** shall:
- 7.23.1** first pay **Non-Indemnifiable Loss** other than **Non-Indemnifiable Loss** covered under Extension **3.1 to 3.3 Additional Excess Limit for Non-Indemnifiable Loss**; and
 - 7.23.2** then any amount paid by the **Insured Organisation** on behalf of an **Insured Person**; and
 - 7.23.3** then pay any amount incurred by the **Insured Organisation**; and
 - 7.23.4** finally, pay **Non-Indemnifiable Loss** covered under Extension **3.1 to 3.3 Additional Excess Limit for Non-Indemnifiable Loss**.
- 7.24** The insolvency of any **Insured Company** shall not relieve **Keystone** of any of its obligations to prioritise payment under this **Policy**.

Severability and Non-Imputation

- 7.25** Any failure of a party covered by this **Policy** to:
- 7.25.1** comply with the duty of disclosure under the *Insurance Contracts Act 1984 (Cth)*;
 - 7.25.2** comply with any obligation under this **Policy** (other than the obligation to pay premium); or
 - 7.25.3** refrain from conduct which is dishonest, fraudulent, criminal or malicious,
- shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall be entirely innocent of and have had no prior knowledge of any such failure, and as soon as practicable after becoming aware of any such failure, advise **Keystone** in writing of all its relevant circumstances.

Subrogation

- 7.26** **Keystone** shall be subrogated to the **Insured's** rights of recovery against any person or entity whether payment has in fact been made and whether the **Insured** has been compensated in full for their loss, if **Keystone** grants indemnity under this **Policy**. Each **Insured** must, at its own cost, provide all reasonable assistance to **Keystone** (including but not limited to giving information, signing documents and giving evidence) to help enforce those rights.
- 7.27** The **Insured** must not do anything (including but not limited to excluding or limiting the liability of other parties in contracts, whether they are written contracts) that may prejudice **Keystone's** position or its potential or actual rights of recovery against any party.
- 7.28** Any amounts recovered by **Keystone** in excess of **Keystone's** total payment to the **Insured** (including **Costs and Expenses**) shall be restored to the **Insured** less the cost to **Keystone** of such recovery.

Variation of this Policy

- 7.29** No variation of this **Policy** will be effective, unless made by **Endorsement**.

Important Information

This Policy is issued by:

Keystone Underwriting Pty Ltd ABN 78 601 944 764 (Keystone)

Keystone Underwriting Pty Ltd is a Corporate Authorised Representative (No. 000468712) of:

Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFS License No: 518244

Who is the Insurer?

Certain Underwriters at Lloyd's ("Underwriters") will be providing the financial service. Keystone is authorised to quote, bind and issue Certificates of Insurance under a Binding Authority Agreement (Binder) granted to Keystone by those Underwriters. Keystone will provide details of the syndicate numbers and the proportions underwritten by them on request.

General Insurance Code of Practice

Lloyd's supports the General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry.

What makes up the Insurance Contract?

This contract of insurance is made up of the Schedule, this Policy and any Endorsements that Keystone issues when an application is accepted or an existing Policy is renewed or amended.

Significant Features, Benefits and Exclusions

This Policy provides many significant features and benefits, subject to Conditions and Exclusions. Exclusions apply to this Policy and all of them are important. It is important that this Policy is read carefully to be aware of and understand the extent of cover that it offers. It will give full details of the Exclusions.

Significant Risks

The Insured should make sure that the sum insured and the limits to be purchased will be sufficient. All the terms and conditions contained in this Policy need to be understood.

Claims Made Policy

This Policy is issued by Keystone on a claims made and notified basis. This means that it only covers claims first made against an Insured during the Period of Insurance and notified to Keystone in writing during the Period of Insurance. The Policy does not provide cover for any claims made against an Insured during the Period of Insurance if at any time prior to the Period of Insurance starting, an Insured was aware of facts which might give rise to those claims being made against them.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where an Insured gives notice in writing to an insurer during the Period of Insurance of facts that might give rise to a claim against the Insured, the insurer cannot refuse to pay a claim which arises out of those facts, by reason only that the claim is made after the Period of Insurance has expired.

Retroactive Liability

This Policy is limited by a Retroactive Date. The Policy does not cover any liability arising from an Insured's conduct prior to the Retroactive Date.

Alteration to Risk and Deregistration

This Policy requires an Insured to notify Keystone within thirty (30) days of any material change to the business, or in the event of insolvency or bankruptcy. This Policy requires an Insured to give

immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of an Insured's statutory registration. Claims arising from conduct which occurs subsequent to the cancellation, suspension or termination of the Insured's statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the Insured's profession are excluded from indemnity under this Policy. However, this condition does not apply if the suspension relates purely to the late payment of registration fees.

Doctrine of Utmost Good Faith

Every insurance contract is subject to this doctrine which requires the parties to the contract to act toward each other with the utmost good faith. Failure to do so may prejudice any claims and/or the continuation of the insurance contract.

The Insured's Duty of Disclosure - (this applies to non-consumer insurance contracts only)*

The Insured has a duty to tell Keystone anything that the Insured knows, or could reasonably be expected to know, before entering an insurance contract, that may affect Keystone's decision to insure the Insured and on what terms. The Insured has this duty until Keystone agrees to insure the Insured.

The Insured has the same duty before the Insured renews, extends, varies, or reinstates an insurance contract.

The Insured does not need to tell Keystone anything that:

- reduces the risk for which the Insured is insured; or
- is common knowledge; or
- Keystone knows, or should know; or
- Keystone waives the Insured's duty to tell Keystone.

If the Insured does not tell Keystone

Keystone may if the Insured does not tell Keystone anything the Insured is required to tell:

- cancel the Insured's contract, or
- reduce the amount to be paid to the Insured if the Insured makes a claim, or
- both the above.

Keystone may refuse to pay a claim and treat the contract as if it never existed if the Insured's failure to tell Keystone is fraudulent.

Change of Circumstances

The terms and conditions of this Policy will be based on information the Insured provided to Keystone. It is essential Keystone are advised of any material change that occurs to this information prior to the inception of this Policy. Failure to do so by the Insured may prejudice any subsequent claims under the Policy and/or jeopardise the continuation of the insurance contract.

* From Schedule 1, Part 1 Insurance Contracts Regulations 2017. A "Consumer Insurance Contract" is a policy of insurance that is wholly or predominantly obtained for personal, domestic, or household purposes.

Buying Insurance

Set out below are important matters that apply to the initial enquiry, buying of insurance, and renewal of cover. Defined terms are the same as in the Policy.

Information that Keystone ask

Keystone will only ask for and consider relevant information when assessing the Insured's application for cover.

Assessing Applications

The Insured will have access to information that Keystone has relied on in assessing their application and an opportunity to correct any mistakes or inaccuracies. Keystone may decline to release information in special circumstances, but will not do so unreasonably. Keystone will give reasons in these circumstances, and the Insured will have the right to request Keystone to review the decision through Keystone's complaints handling procedures. Keystone will provide reasons in writing upon request.

Mistakes

Keystone will immediately initiate action to correct an error or mistake in assessing the Insured's application for cover where it is identified.

Misrepresentation

Keystone's sales process will be conducted in a fair, honest and transparent manner.

Declining Cover

If Keystone cannot provide insurance cover, Keystone will:

- (a) give reasons; and
- (b) refer the entity/person seeking insurance to another insurer, AFCA or NIBA, for information about alternative insurance options (unless they already have someone acting on their behalf).

Keystone will make available information about Keystone's complaints handling procedures if the entity/person is unhappy with Keystone's decision.

Policy Information

Information about Keystone's policy wordings will be available when the Insured buy insurance from Keystone as well as on request. They will also be available on Keystone's website at www.keystoneunderwriting.com.au.

Subrogation

The Insured may prejudice their rights regarding a claim if, without prior approval from Keystone, the Insured makes an agreement with a third party that would prevent Keystone from recovering any applicable loss (in whole or in part) from that, or another party.

This Policy contains provisions that have the effect of excluding or limiting Keystone's liability for a claim under this Policy if you have entered into any agreement that excludes, limits or delays the Insured's right to recover damages from another party in respect of such claim.

Cost of Policy

The cost of this Policy is made up of premium plus any applicable policy fees, government taxes and charges. Keystone may cancel this Policy if the Insured fails to pay the total premium due.

Deductibles

The Insured may be required to pay a deductible or excess if a claim is made under this Policy. Details of applicable deductibles or excess are provided in the Schedule. This Policy sets out the terms relating to the payment of deductibles or excesses.

Taxation

All taxes and charges are shown as separate items (e.g. fire and emergency services levy, stamp duty depending upon location and GST).

Cooling-off Period

The Insured has the right to cancel this Policy with Keystone within 14 days of the date that the Policy inception, unless a claim is made. Keystone will refund the full amount of the premium less any duties or taxes payable if this cancellation occurs during the cooling-off period. This Policy will be terminated from the date Keystone receive the request to cancel.

Making a Claim

Benefits are payable if the Insured suffers a loss that is covered under this Policy during the Period of Insurance, except if an Exclusion or Condition applies. The Insured must immediately notify Keystone or their insurance adviser if there is a loss under this Policy.

Cancelling the Policy Before the Due Date

The Insured may cancel this Policy at any time by notifying us in writing, detailing the date that the cancellation will take effect. Keystone will refund any unearned premium to the Insured or their insurance adviser within 15 working days after the date of cancellation. Unearned premium will be computed pro rata for the unexpired term of this Policy, unless agreed in advance through the insurance adviser and set out in this Policy.

Privacy

Keystone are committed to safeguarding and protecting the Insured's privacy. Keystone is bound by the provisions of the *Privacy Act 1988* which sets out the standards to meet in the collection, use and disclosure of personal information.

The Act defines "personal information" as "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion".

Purpose of Collection

Keystone will only use personal information the Insured provides to quote on and insure risks and matters incidental thereto, including investigating and managing claims.

It may be necessary for Keystone to provide the Insured's personal information to others, such as other insurers or reinsurers, claims investigators, lawyers and other professionals, and government bodies. Keystone will not under any circumstances trade, rent or sell the information.

Keystone cannot properly quote insurance and cannot insure the Insured if they do not provide Keystone with complete, accurate and up-to-date information. If the Insured provide Keystone with personal information about anyone else, Keystone will rely on the Insured to have told them that their information will be provided to Keystone, to whom Keystone may provide it, the purposes for which Keystone will use it and that they can access it. Keystone relies on the Insured to have obtained their consent on these matters if the information is sensitive.

Access to Information

The Insured can check the personal information Keystone holds about them at any time. Requests for access can be made in writing to:

The Privacy Officer
Keystone Underwriting Australia Pty Ltd
17/296 Bay Road
Cheltenham, VIC 3192

Keystone will keep the Insured informed of any delays in responding to the Insured's request throughout the process.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au.

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Keystone Underwriting Australia Pty Ltd in the first instance:

The Complaints Officer
Keystone Underwriting Australia Pty Ltd
17/296 Bay Road
Cheltenham, VIC 3192
Phone: 1300 946 530
Email: complaints@ksua.com.au

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited
Email: jdaustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:
Lloyd’s Underwriters’ General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000
who has authority to accept service on the Underwriters’ behalf;
- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

Claims Department - Keystone Underwriting Australia Pty Ltd
Telephone: 1300 946 530
Email: claims@ksua.com.au