

# Film Production E&O Policy Wording

CHUBB®

In consideration of payment of the premium and subject to the terms and conditions of this policy, the Company and the **Insured** agree as follows:

## 1. Insuring Clause

### A. Producers Liability

The Company shall pay, on behalf of each **Insured**, **Loss** on account of a **Claim** first made during the **Policy Period** alleging civil liability on the part of that **Insured** arising from the conduct of a **Production Activity** by:

- (i) that **Insured**;
- (ii) any person, partnership, firm or company acting on behalf of an **Insured Organisation**; or
- (iii) any predecessor in business of an **Insured Organisation**,

including, but not limited to, civil liability for:

- (a) libel, slander or any other form of defamation (whether of person or products);
- (b) infringement or misappropriation of copyright, trade mark, service mark, design right, trade secret, know-how or any other intellectual property, but not of patent;
- (c) intrusion upon, interference with or infringement of right to publicity, right to privacy, family life, a person's home or correspondence;
- (d) harassment, trespass, false arrest, wrongful detention or imprisonment, wrongful entry or eviction, eavesdropping or invasion of private occupancy; or
- (e) negligence in what is included in or omitted from **Matter**, including, but not limited to harm to any person who acts or fails to act in reliance upon **Matter**.

## 2. Definitions

When used in bold type in this policy:

**Claim** means:

- (a) a written demand, whether or not containing a demand for monetary compensation and including but not limited to a written demand for the retraction of **Matter** published by an **Insured**; or
- (b) a civil proceeding,

made against an **Insured** and arising from a **Production Activity**, including any appeal there from.

**Defence Costs** means that part of **Loss** consisting of reasonable and necessary costs, expenses, charges and fees (including but not limited to lawyers' and experts' fees) incurred in defending or investigating a **Claim** first made during the **Policy Period** (other than internal expenses of an **Insured Organisation**). **Defence Costs** also includes reasonable legal fees incurred in proceedings brought by an **Insured** to seek a declaration of entitlement to use a copyright or trade mark, but the **Company**:

- (a) shall only be liable for such fees from the time when a civil proceeding, alleging infringement or misappropriation of that copyright or trade mark, has been commenced against that **Insured** and only for as long as that civil proceeding continues; and
- (b) shall only be liable for such fees if that **Insured** is covered under this policy for **Loss** on account of that civil proceeding.

**Employee** means a natural person under a contract of service with an **Insured Organisation**.

**Insured** means a person who is an **Insured Organisation** or an **Insured Person**.

**Insured Organisation** means an organisation which is the **Principal Organisation** or a **Subsidiary**.

**Insured Person** means:

- (a) any natural person or entity who was, now is or shall become a director, officer, member of the management committee, partner or foreign equivalent executive position, employee (full-time, part-time, seasonal, leased or temporary), cast or crew member, volunteer or a show participant of an **Insured Organisation**, but only while acting within the scope of his or her duties as such;
- (b) any natural person or entity that disseminates **Matter** where the **Insured Organisation** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding **Claims** arising out of the dissemination of such **Matter**, provided that coverage is not provided for such natural person or entity for any **Matter** created, modified or furnished by such person or entity;
- (c) any natural person or entity that is an agent or independent contractor of the **Insured Organisation** including but not limited to stringers, freelancers and photographers, but only with respect to **Claims** arising out of **Production Activities** done for or at the direction of the **Insured Organisation**, and only if and to the extent that the **Insured Organisation**, after evaluating the merits of the **Claim**:
  - (i) has agreed in writing to include such agent or independent contractor as an **Insured** under this policy; and
  - (ii) provides the Company with written notice of such agreement within sixty (60) days of the **Insured** first becoming aware of such **Claim**;
- (d) the **Insured Organisation's** stockholders for their liability as stockholders; or
- (e) any loan-out company and its officers and employees but only with respect to specific work for which the loan-out company has agreed to supply the services of its employees to the **Insured Organisation** for **Production Activities**.

**Internet Activity** means the display or other use of **Matter** on an **Internet Site**, that was created on or prior to the inception date of the policy including advertising.

**Internet Site** means any internet site or social media platform directly related to the **Production**.

**Liquidated Damages** means a sum of money stipulated by the parties to a contract as the amount of damages to be paid for breach of that contract.

**Loss** means the amount which an **Insured** is legally liable to pay on account of a **Claim** first made during the **Policy Period**, including:

- (a) damages (including punitive and exemplary damages):
  - (i) which are for libel, slander or other form of defamation; or
  - (ii) which are insurable under the law most favourable to the insurability of such damages of any jurisdiction which has a substantial relationship to the relevant **Insured**, to the Company or to the **Claim** which gives rise to the damages;
- (b) judgments and settlements; and
- (c) **Defence Costs**.

**Loss** does not include:

- (i) any amount for which an **Insured** is absolved from payment by reason of any court order or any legally binding promise (other than a legally binding promise by an **Insured Organisation** to indemnify an **Insured Person**);
- (ii) taxes, fines or penalties;
- (iii) **Liquidated Damages** or the multiple portions of any multiplied damages award;
- (iv) any consideration (including but not limited to royalties) owed or paid in connection with an **Insured's** goods, products or services or any restitution, reduction, disgorgement or return of any payment, charges or fees;
- (v) any costs incurred by an **Insured** to comply with any order for injunctive or other non-monetary relief or to comply with an agreement to provide such relief;
- (vi) an **Insured's** production costs, lost profits, or the costs of correcting, recalling, reproducing or reprinting any **Matter** or the costs of any services in connection therewith; or
- (vii) matters for which the company is legally prohibited from paying under Australian law.

**Matter** means the content of any communication of any kind whatsoever, regardless of the nature or form of such content or the medium by which such content is communicated.

**Personal Injury** means bodily injury, mental illness, sickness, disease or death, but not including emotional distress, of any natural person.

**Principal Organisation** means the organisation set forth in the Schedule.

**Policy Period** means the period of time set forth in the Schedule but subject to prior termination in accordance with the section headed Termination.

**Pollutants** means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products and any noise.

**Pollution** means:

- (a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any **Pollutants**;
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; or
- (c) any actual or alleged breach of duty in any way connected to any **Pollutants**.

**Production** means a production set forth in the Schedule.

**Production Activity** means:

- (a) preparing, producing, publishing, disseminating, releasing, broadcasting, telecasting, exhibiting, selling, licensing or distributing a **Production**;
- (b) developing, creating, producing, placing or disseminating **Matter** which consists of or relates to advertising, publicising, promoting or selling a **Production**; or
- (c) licensing a logo, symbol, trade mark, service mark or any other intellectual property to another person for use in connection with the sale of goods or services directly relating to a **Production**; and
- (d) **Internet Activities** directly related to the **Production**,

as part of the activities of an **Insured Organisation**.

**Property Damage** means physical damage to or destruction or loss of use of any tangible property.

**Proposal** means:

- (a) all proposal forms and documents provided to the Company by or on behalf of the **Principal Organisation** or any other **Insured**, or to which the Company was referred by or on behalf of the **Principal Organisation** or any **Insured**, in the process of applying for this policy; and

- (b) all representations to the Company by or on behalf of the **Principal Organisation** or any other **Insured**, in the process of applying for this policy.

**Subsidiary** means a company in which the **Principal Organisation** directly and/or indirectly:

- (a) holds a majority of the voting rights;
- (b) has the right to appoint or remove a majority of the board of directors; or
- (c) controls alone, pursuant to a written agreement with other shareholders, a majority of the voting rights.

**Wrongful Act** means any actual or alleged conduct or omission by:

- (a) an **Insured**;
- (b) a person, partnership, firm or company acting on behalf of an **Insured Organisation**; or
- (c) a predecessor in business of an **Insured Organisation**,

and which gives rise, or is alleged to give rise, to civil liability on the part of an **Insured**.

### 3. Exclusions

The Company shall not be liable for **Loss**, on account of any **Claim**:

- (a) based upon, arising from, or in consequence of any **Wrongful Act** prior to the Retroactive Date set forth in the Schedule;
- (b) based upon, arising from or in consequence of any fact or circumstance if notice of such fact or circumstance has been given under any policy or coverage section of which this policy is a renewal or replacement or which it may succeed in time;
- (c) based upon, arising from, or in consequence of any demand, suit or proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the Pending or Prior Date set forth in the Schedule, or the same or substantially the same facts or circumstances underlying or alleged therein;
- (d) brought by or on behalf of any employee, former employee or prospective employee based upon or directly or indirectly arising out of or resulting from the employment relationship or the nature, terms or conditions of employment, including but not limited to claims of wrongful or unfair discipline, dismissal, discharge or termination, breach of contract, misrepresentation, discrimination, harassment, failure to employ or promote, deprivation of a career opportunity, failure to grant tenure, evaluation, invasion of privacy, defamation or infliction of emotional distress; however this Exclusion shall not apply to any **Claim** that involves a dispute over the ownership or exercise of rights in any **Matter** provided by such individual;

- (e) for **Personal Injury** or **Property Damage** which does not arise from negligence in what is included in or omitted from **Matter**;
- (f) based upon, arising from or in consequence of any actual or alleged:
  - (i) warranty or guarantee, or breach of fiduciary duty, relating to advertised products or services; or
  - (ii) malfunction or defect in, or unsuitability or unfitness for their purpose of, advertised products or services,

including but not limited to a **Claim** for **Personal Injury** or **Property Damage** resulting from advertised products or services, even if such **Claim** is based upon, arising from or in consequence of any actual or alleged negligence in what is included in or omitted from **Matter**;

- (g) based upon, arising from or in consequence of **Pollution**;
- (h) based upon, arising from or in consequence of any actual or alleged infringement or misappropriation of patent;
- (i) based upon, arising from or in consequence of any actual or alleged breach of any law or regulation designed to prevent anti-trust or anti-competitive practices, monopoly, abuse of dominant position, cartel activity, price fixing, price discrimination, predatory pricing, restraint of trade or otherwise to protect competition;
- (j) based upon, arising from or in consequence of any actual or alleged:
  - (i) virus infection of, unauthorised access to, unauthorised alteration of or unauthorised damage to any computer, computer program, computer network or computer database;
  - (ii) delay, disruption or failure of any communication network or service, hardware or software (including, but not limited to, **Loss** on account of any **Claim** for lost profits or opportunities resulting from such delay, disruption or failure); or
  - (iii) unauthorised collection, use or dissemination of internet user information;
- (k) for breach of or alleging liability under any express or implied warranty, guarantee or contractual term; however this Exclusion shall not apply to:
  - (i) such amount of **Loss** as the **Insured** would be legally liable to pay in the absence of such warranty, guarantee or term;
  - (ii) a **Claim** for breach of or alleging liability under an express or implied agreement to indemnify described in (b) in the definition of **Insured Person**;
  - (iii) a **Claim** for breach of or alleging liability under an agreement between an **Insured** and the source of any **Matter** supplied to the **Insured** regarding:

- (A) the confidentiality to be afforded to such source or **Matter**; or
- (B) the ownership or exercise of rights in any **Matter** provided by such source;
- (iv) a **Claim** for breach of or alleging liability under, a contractual obligation to acknowledge another person's authorship or to mention another person in a credit; or
- (v) a **Claim** for misappropriation of ideas in breach of an implied contract;
- (l) based upon, arising from or in consequence of any deliberately criminal, fraudulent or dishonest act or omission or any intentional breach of law or regulation, by, on behalf of or with the consent of any **Insured**, as evidenced by:
  - (i) any written statement or written document by any **Insured**; or
  - (ii) any judgment, award, order, decree, ruling or equivalent determination in any judicial, administrative, arbitration or alternative dispute resolution proceeding,
 however this Exclusion shall not apply to a **Claim** alleging libel, slander or other form of defamation (whether of person or products);
- (m) based upon, arising from or in consequence of such **Insured** having gained in fact any profit, remuneration or advantage to which such **Insured** was not legally entitled, as evidenced by:
  - (i) any written statement or written document by such **Insured**; or
  - (ii) any judgment, award, order, decree, ruling or equivalent determination in any judicial, administrative, arbitration or alternative dispute resolution proceeding;
- (n) based upon, arising from or in consequence of any actual or alleged breach of law or regulation relating to unsolicited communications by telephone, fax, computer or other telephonic or electronic device; or
- (o) based upon, arising from or in consequence of any **Wrongful Act** in connection with any contest, lottery, promotional game or game of chance, including but not limited to the printing of, or over-redemption of, tickets, coupons or prizes for any of the foregoing; however this Exclusion shall not apply to the extent that the **Claim** alleges:
  - (i) libel, slander or any other form of defamation (whether of person or products);
  - (ii) infringement or misappropriation of copyright, trade mark, service mark, design right, trade secret, know-how or any other intellectual property, but not of patent;
  - (iii) intrusion upon, interference with or infringement of right to publicity, right to privacy, family life, a person's home or correspondence; or

- (iv) harassment, trespass, false arrest, wrongful detention or imprisonment, wrongful entry or eviction, eavesdropping or invasion of private occupancy.

#### 4. Severability - Imputation of Knowledge

With respect to the Exclusions in this policy, in order to determine if coverage is available:

- (a) no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person**; and
- (b) only facts pertaining to and knowledge possessed by any chief executive officer, chief financial officer, company secretary or holders of equivalent positions in any jurisdiction of an **Insured Organisation** shall be imputed to such **Insured Organisation**.

#### 5. Limits of Liability

The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the **Policy Period**, whether involving one or any number of **Insured's**, shall not exceed the Aggregate Limit of Liability for each **Policy Period** set forth in the Schedule.

The Company's maximum liability for all **Loss** on account of any one **Claim**, whether the **Claim** involves one or any number of **Insureds**, shall not exceed the applicable Limit of Liability for each **Claim** set forth in the Schedule, which Limit of Liability is part of and not in addition to the maximum aggregate liability of the Company referred to in the first paragraph of this section.

**Defence Costs** are part of and not in addition to the Limits of Liability set forth in the Schedule. The payment by the Company of **Defence Costs** erodes those Limits of Liability.

Amounts stated for limits are maximum liabilities of the Company for all **Insureds** together, not maximum liabilities per **Insured**.

#### 6. Contributions and Co-insurance

With regard to each and every **Claim**, the Company shall only be liable for that part of **Loss** which is in excess of the applicable **Claim** Contribution set forth in the Schedule. Further, with respect to all **Loss** on account of that **Claim** which is in excess of that **Claim** Contribution, the **Insured** shall bear uninsured and at its own risk the applicable percentage of such **Loss** set forth set forth in the Schedule as the General Co-insurance Percentage and the Company shall be liable only for the rest of such **Loss**.

#### 7. Causal Connection

All **Claims** arising out of the same **Wrongful Act** and/or arising out of causally-connected **Wrongful Acts**, whether by one or any number of **Insureds**, shall be deemed to be a single **Claim** first made on:

- (a) the date when the first of such **Claims** was first made; or
- (b) the earliest date one of such **Claims** is deemed first made by this policy or any policy which this policy renews, replaces or follows in whole or in part (if that earliest date is earlier than the date referred to in (a) immediately above),

regardless of whether that date is before or during the **Policy Period**.

## 8. Reporting and Notice

The **Insured** shall give to the Company written notice of any **Claim** as soon as practicable.

If this policy is not renewed, the Company shall not be liable for **Loss** on account of any **Claim** of which it is not given written notice within sixty (60) days of the end of the **Policy Period**.

If, during the **Policy Period**, any **Insured** becomes aware of circumstances which could give rise to a **Claim**, the Company must be given written notice of those circumstances as soon as practicable and within the **Policy Period**. Provided that this is done any **Claim** subsequently arising from those circumstances shall be deemed to have been first made during the **Policy Period**. Circumstances shall not be regarded as notified unless the written notice expressly identifies the **Wrongful Act** and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the **Insured** first became aware of the circumstances.

Each **Insured** shall give to the Company such information and cooperation as the Company may reasonably require including but not limited to a description of the **Claim**, the nature of the alleged **Wrongful Act** and the date it was committed, the nature of the alleged damage, the names of the claimants and defendants and the manner in which the **Insured** first became aware of the **Claim**.

All notices to the Company under this policy shall be given in writing, addressed to:

Chubb Insurance Australia Limited  
ABN: 23 001 642 020 AFSL: 239687

Grosvenor Place  
Level 38, 225 George Street  
Sydney NSW 2000  
O +61 2 9335 3200  
F +61 2 9335 3411  
[www.chubb.com/au](http://www.chubb.com/au)

Email: [aus.financiallinesclaims@chubb.com](mailto:aus.financiallinesclaims@chubb.com)

Any such notice shall be effective on the date of receipt by the Company at such address.

## 9. Defence of Claims

With respect to each **Claim** the **Insured** may conduct the defence of that **Claim** itself or may require the Company to do so. To require the Company to do so, the **Insured** must

give the Company written notice, which must be received by the Company within ten (10) days of commencement of the **Claim** by service upon the **Insured** of a written demand or of proceedings (and, upon receipt of such notice within those days, the Company shall have the right and duty to conduct the defence of the **Claim**).

If the **Insured** does not require the Company to conduct the defence of the **Claim** it shall be the duty of the **Insured** and not of the Company to do so and to retain lawyers of its own choosing with the Company's prior written consent, such consent not to be unreasonably withheld or delayed.

The Company shall, upon the **Insured's** written request, advance on a current basis **Defence Costs** owed under this policy. As a condition of payment of **Defence Costs** before the final disposition of a **Claim**, the Company may require a written undertaking on terms and conditions satisfactory to it, guaranteeing the repayment of any **Defence Costs** paid on behalf of any **Insured** if it is finally determined that this policy would not cover **Loss** incurred by such **Insured** in connection with such **Claim**.

With respect to any **Claim** that appears reasonably likely to be covered in whole or in part under this policy, the Company shall have the right and shall be given the opportunity to associate effectively with the **Insured**, and shall be consulted in advance by the **Insured** regarding the investigation and defence of such **Claim**.

If more than one **Insured** is involved in a **Claim**, the Company shall not pay for the representation of the **Insureds** by separate lawyers, unless separate representation is needed to avoid a conflict of interest.

Each **Insured** agrees to provide the Company with all information, assistance and cooperation which the Company may reasonably require and agrees they will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

## 10. Retraction Demands and Settlement of Claims

Each **Insured** shall retain sole discretion regarding whether and under what circumstances to issue a retraction of **Matter** previously published by that **Insured**.

Each **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent which shall not be unreasonably withheld or delayed. The Company shall not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which it has not consented in writing. However, an **Insured** may agree to any settlement of a **Claim** where all the **Loss** on account of that **Claim** is within the **Claim** Contribution applicable to that **Claim**.

Each **Insured** shall promptly communicate to the Company all offers to settle **Claims** covered by this policy. However, the Company has no right to settle **Claims** without the consent of the **Insured** and the Company's duty to defend and to pay **Loss** (including **Defence Costs**) shall not be limited by an **Insured's** refusal to accept an offer to settle a **Claim**.

## 11. Other Insurance

Subject to section 45 of the Insurance Contracts Act 1984 (Cth), if any **Loss** is insured under any other valid policy, then this policy shall cover such **Loss**, subject to its terms, only to the extent that the amount of such **Loss** is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this policy.

## 12. Acquisition or Creation of Another Organisation

If, during the **Policy Period**, an **Insured Organisation**:

- (a) acquires securities or voting rights in another organisation which as a result of such acquisition or creation becomes a **Subsidiary**;
- (b) creates an organisation which as a result of such creation becomes a **Subsidiary**; or
- (c) acquires any organisation by merger into or consolidation with that **Insured Organisation**,

then the organisation and its **Insured Persons** shall automatically become **Insureds** under this policy with effect from the date of such acquisition or creation, but only with respect to **Wrongful Acts** after such acquisition or creation.

However, if such acquired or created organisation has annual revenues (or projected annual revenues) which are greater than ten percent (10%) of the annual revenues of all the **Insured Organisations** together as recorded in the latest annual audited reports and accounts of the **Insured Organisation**, then:

- (i) for that organisation and its **Insured Persons** to become **Insureds** under this policy, the **Principal Organisation** must give written notice of the acquisition or creation, containing full details thereof, to the Company within ninety (90) days following the acquisition or creation, whereupon they shall become **Insureds** with effect from the date of the acquisition or creation (but only with respect to **Wrongful Acts** after that acquisition or creation); and
- (ii) the Company shall have the right to amend the terms of this policy, including charging an additional premium and including terminating cover for that organisation and its **Insured Persons**, but only with effect from ninety (90) days after the acquisition or creation.

## 13. Acquisition of the Principal Organisation

If, during the **Policy Period**:

- (a) the **Principal Organisation** merges into or consolidates with another organisation (other than in accordance with (c) of the section headed Acquisition or Creation of Another Organisation); or
- (b) a person or persons acting in concert acquires ownership or voting control of more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of the members of the board of directors of the **Principal Organisation**, then:
  - (i) cover for the **Insured Organisations** and their **Insured Persons** shall continue until the end of the **Policy Period**, but only for **Wrongful Acts** prior to such merger, consolidation or acquisition;
  - (ii) the **Principal Organisation** shall give written notice of such merger, consolidation or acquisition as soon as practicable together with such other information as the Company may request; and
  - (iii) the entire premium for this policy shall be deemed fully earned and non-refundable.

## 14. Subsidiaries

Should an organisation cease to be a **Subsidiary** before or during the **Policy Period**, there shall nonetheless be cover under this policy with respect to such **Subsidiary** and its **Insured Persons**.

With respect to each **Subsidiary** and its **Insured Persons**, cover under this policy shall apply only for **Wrongful Acts** at a time when the **Subsidiary** is a **Subsidiary**. The Company may agree to provide cover for prior **Wrongful Acts** following the receipt of any information the Company may require.

## 15. Proposal - Non Avoidance

In issuing this policy, the Company has relied upon the statements, representations and information in the **Proposal**.

No statement, representation or information provided in the **Proposal** by an **Insured Person** or knowledge possessed by such **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available under this policy.

The Company shall not avoid this policy or exercise any rights against any **Insured** for any misrepresentation (fraudulent or otherwise) in the **Proposal** or for any non-disclosure (fraudulent or otherwise). However in the event of misrepresentation or non-disclosure which would otherwise entitle the Company to avoid this policy or exercise rights against an **Insured**:

- (a) no **Insured Person** who, at the time the contract evidenced by this policy was entered into, knew the true position with regard to the facts or matters misrepresented to the Company or knew any of the non-disclosed facts, and no **Insured Organisation** shall have cover under this policy for any **Loss** of that **Insured Person** on account of a **Claim** based upon, arising from or in consequence of the true position of any misrepresented or non-disclosed facts; and
- (b) if any chief executive officer, chief financial officer, company secretary or the holder of any equivalent position in an jurisdiction of an **Insured Organisation** knew the true position with regard to the facts or matters misrepresented to the Company or knew any of the non-disclosed facts, then no **Insured Organisation** shall have cover under this policy for any **Loss** of that **Insured Organisation** on account of a **Claim** based upon, arising from or in consequence of the true position of any misrepresented or non-disclosed facts.

## 16. Continuity of Cover

Notwithstanding Exclusion 3. (b), coverage is provided for **Claims** or circumstances which could or should have been notified under any policy of which this policy is a renewal or replacement or which it may succeed in time provided always that:

- (a) the **Claim** or circumstance could and should have been notified after the Pending or Prior Date set forth in the Schedule;
- (b) the Company has continued to be the insurer under such previous policy without interruption; and
- (c) the cover provided by this section shall be in accordance with all the terms and conditions of the policy under which the **Claim** or circumstances could and should have been notified.

## 17. Territory, Choice of Law and Jurisdiction

Coverage shall extend anywhere in the world.

This policy does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the Company, its parent company or its ultimate controlling entity from providing the insurance.

The construction and enforcement of the provisions of this policy shall be determined in accordance with and governed by the laws of Australia. Any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

## 18. Valuation and Foreign Currency

All premiums, limits, deductibles, **Loss** and other amounts under this policy are expressed and payable in Australian currency. If a judgment is rendered, settlement is denominated or any element of **Loss** is stated in a currency other than Australian dollars, payment under this policy

shall be made in Australian dollars at the mid-rate of exchange published in the currency conversion website, Oanda.com or, if it is no longer current, a currency conversion website selected by the Company, on the date the final judgment is reached, the amount of the settlement agreed upon or any element of **Loss** is due, respectively.

## 19. Subrogation

In the event of any payment under this policy, the Company shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery, and the **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring suit in the name of each **Insured**.

## 20. Bankruptcy

The bankruptcy, winding-up, receivership or insolvency of an **Insured** or of the estate of an **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights under this policy.

## 21. Authorisation Clause

By acceptance of this policy the **Principal Organisation** agrees to be the sole agent of and act on behalf of each **Insured** with respect to: the payment of premiums and the receiving of any return premiums that may become due under this policy; the negotiation, agreement to and acceptance of endorsements; the giving or receiving of any notice provided for in this policy; the adjustment of loss amounts; and the receipt of payment of **Loss**. The **Principal Organisation** agrees that it shall be responsible for the application of any such payment as provided in this policy. Each **Insured** agrees that the **Principal Organisation** shall act on its behalf with respect to all such matters.

## 22. Alteration and Assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to this policy which is signed by an authorised employee of the Company.

## 23. Termination

This policy shall terminate at the earliest of the following times:

- (a) thirty (30) days after the receipt by the **Principal Organisation** of a written notice of termination from the Company in accordance with the Insurance Contracts Act 1984 (Cth), as amended, except in the case of termination for non-payment of premium, in which case it will be fourteen (14) days after receipt of a written prior notice or, if a later time is specified in such notice, at such later time;



- (b) upon the receipt by the Company of written notice of termination from the **Principal Organisation**;
- (c) upon expiration of the **Policy Period** set forth in the Schedule; or
- (d) at such other time as may be agreed upon in writing by the Company and the **Principal Organisation**.

The Company shall refund the unearned premium computed at customary short-rates if this policy is terminated by the **Principal Organisation**. Under any other circumstances the refund shall be computed pro-rata. Payment or tender of any unearned premium by the Company shall not be a condition to the effectiveness of a notice of termination but such payment shall be made as soon as practicable thereafter.

## 24. Conformance with Local Laws

The provisions of this policy shall be read subject to the laws governing the construction of this policy and if any provisions of this policy are inconsistent with such laws then:

- (a) where such provision can be read so as to give it a valid and enforceable operation of a partial nature, it shall be read to the extent necessary to achieve that result; and
- (b) in any other case, such provision shall be severed from this policy, in which event the remaining provisions shall operate as if the severed provision had not been included.

## 25. Policy Construction

In this policy:

- (a) the title and any headings or sub-headings are solely for convenience and form no part of its terms and conditions;
- (b) the Schedule is part of and forms an integral part of this policy;
- (c) the singular includes the plural and the plural includes the singular, unless otherwise indicated;
- (d) the word 'person', wherever it appears, means a legal or a natural person, unless otherwise specified; and
- (e) a reference to one gender includes the other gender.