



Statutory Liability Policy

In consideration of payment of the premium and in reliance on the **Proposal**, declaration and any other underwriting information provided, which will be deemed to be incorporated into and be the basis of the **Policy**, and subject to the provisions of this **Policy**, the **Insurer** will indemnify the **Insured** as follows.

Section 1 INSURING CLAUSE AND EXTENSION

INSURING CLAUSE

- 1.1 The **Insurer** will indemnify the **Insured** for any **Defence Costs, Fines** and any **Reparation Orders**, up to the **Limit of Indemnity**, arising out of any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** as required by this **Policy**.

AUTOMATIC EXTENSION

The cover provided by this **Policy** is extended as set out below. This cover is subject to the terms and conditions of the **Policy**.

1.2 Discovery Period

- 1.2.1 In the event the **Insurer** refuses to renew this **Policy** or the **Company** cancels or non-renews this **Policy**, the **Company** shall have the right to elect an extension of the coverage provided by this **Policy** for the time period and subject to the additional premium specified at item 8B of the **Schedule**. Coverage for any **Claim** deemed first made during the **Discovery Period** will apply only with respect to any **Event** arising before the end of the **Policy Period**.
- 1.2.2 As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this **Policy** must have been paid and a written request to elect the **Discovery Period**, together with payment of the additional premium for the **Discovery Period**, must be provided to the **Insurer** no later than 60 days following the effective date of the non-renewal or cancellation. The premium paid for the **Discovery Period** is deemed fully earned at the inception of the **Discovery Period**.
- 1.2.3 The fact that the coverage provided by this **Policy** may be extended by virtue of the purchase of the **Discovery Period** shall not in any way increase the **Limit of Indemnity** specified at item 4 of the **Schedule**. For purposes of the **Limit of Indemnity**, the **Discovery Period** is considered to be part of, and not in addition to, the **Policy Period**.

Section 2 DEFINITIONS

- 2.1 **Act of Parliament** means any Act of the New Zealand Parliament, except for an **Excluded Act**, including amendments, re-enactments, replacements, Statutory Regulations, Legislative Instruments or other subordinate legislation.
- 2.2 **Claim** means:
- 2.2.1 an allegation that the **Insured** has committed an offence under an **Act of Parliament** punishable by conviction; or



2.2.2 an inquiry, prosecution, judicial, administrative or regulatory proceeding which could lead to conviction for an offence under an **Act of Parliament**, commenced against and served upon, the **Insured**; or

2.2.3 a threat or intimation that a judicial, administrative, or regulatory proceeding which could lead to conviction for an offence under an **Act of Parliament** will be commenced against the **Insured**; or

2.2.4 proceedings before a Human Rights or Privacy Complaints Review Tribunal; or

2.2.5 conviction of an offence under an **Act of Parliament**,

arising out of an **Event**, regardless of whether the **Claim** originates from a person or the statutory authority or enforcement agency with authority under the **Act of Parliament**.

2.3 **Company** means the **Parent Company** and any **Subsidiary**.

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

Defence Costs does not include (i) any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**, or (ii) any fees, costs or expenses incurred by an **Insured** prior to the time that the **Claim** is first made against the **Insured**.

2.5 **Discovery Period** means the period specified at item 8A of the **Schedule** where purchased by the **Insured**.

2.6 **Event** means any circumstance, act, error or omission by the **Insured** in connection with the **Insured's Business**.

2.7 **Excluded Act** means the **Acts of Parliament** listed in Exclusion 3.5 (Excluded Acts).

2.8 **Fine** means any monetary or pecuniary penalty or costs ordered to be paid by the **Insured**.

2.9 **Insured** means:

2.9.1 the **Company**;

2.9.2 any natural person, who is or has been a principal, partner, director or employee of the **Company**; and

2.9.3 any temporary contract labour, self-employed persons, labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the **Company**,

but only when acting in the course of the **Insured's Business**.

2.10 **Insured's Business** is the business specified at item 2 of the **Schedule**.

2.11 **Insurer** means Berkshire Hathaway Specialty Insurance Company.

2.12 **Limits of Indemnity** mean the amounts specified at item 4 of the **Schedule**.

2.13 **Management Control** means:

2.13.1 owning an interest of an entity representing more than 50% of the power to manage or control said entity, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or



- 2.13.2 having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to elect, appoint or designate a majority of the board of directors or equivalent executives of the entity.
- 2.14 **Parent Company** means the entity or organisation specified at item 1 of the **Schedule**.
- 2.15 **Policy** means this policy wording, the **Schedule**, the **Proposal** and any Endorsement attaching to and forming part of the **Policy** either at commencement or during the **Policy Period**.
- 2.16 **Policy Period** means the period of time specified at item 3 of the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of cancellation.
- 2.17 **Proposal** means the proposal submitted to the **Insurer** for this **Policy** together with any written materials attached thereto or submitted to the **Insurer** in connection with the underwriting of this **Policy**.
- 2.18 **Reparation Order** means an order for reparation imposed by the Court on sentencing following conviction of an **Insured** for an offence including under the Health and Safety in Employment Act 1992 and any subsequent or amending legislation.
- 2.19 **Retention** means the amount specified at item 5 of the **Schedule**.
- 2.20 **Retroactive Date** means the date specified at item 7 of the **Schedule**.
- 2.21 **Schedule** means the schedule attached to and forming part of the **Policy**.
- 2.22 **Subsidiary** means any entity with respect to which the **Company** has **Management Control**.

Section 3 EXCLUSIONS

The **Insurer** will not be liable to indemnify the **Insured** in respect of any **Claim**:

- 3.1 **Commerce Act 1986**
for any pecuniary penalty, restitution, compensation or order for payment imposed by a Court on the **Insured** under Part 6 of the Commerce Act 1986.
- 3.2 **Compliance Costs**
3.2.1 for payment of any **Fine** (or part thereof) which is imposed on the **Insured** for failing to comply with any enforcement or remedial order; or
3.2.2 for the cost incurred by the **Insured** in complying with any enforcement or remedial order.
- 3.3 **Continuing Fine**
for payment of any **Fine** (or part thereof) which is imposed in relation to a period of time after the **Insured** first received notice from the prosecuting body of the intention to commence a prosecution in relation to the office.
- 3.4 **Damages and Non-Criminal Penalties**
for payment of money arising directly or indirectly from a breach of legal obligation (including an obligation owed pursuant to an **Act of Parliament**) other than consequent upon the **Insured's** conviction for an offence. In particular (although without limitation) this **Policy** does not cover proceedings seeking:



- 3.4.1 damages, including punitive, aggravated, liquidated, multiple or exemplary damages; or
- 3.4.2 compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation; or
- 3.4.3 the value of any property subject to confiscation or forfeiture; or
- 3.4.4 any other monetary payment, penalty or fine for which the **Company** may not lawfully indemnify an **Insured**.

3.5 **Excluded Acts**

for any **Claim, Fine, Reparation Order** or **Defence Costs** arising out of, or based upon, attributable to, or in any way involving, directly or indirectly, any of the following **Acts of Parliament**:

- 3.5.1 Arms Act 1983;
- 3.5.2 Aviation Crimes Act 1972;
- 3.5.3 Crimes Act 1961;
- 3.5.4 Criminal Investigations (Bodily Samples) Act 1995;
- 3.5.5 Misuse of Drugs Act 1975;
- 3.5.6 Criminal Proceeds (Recovery) Act 2009;
- 3.5.7 Summary Offences Act 1981;
- 3.5.8 Land Transport Act 1961 or 1998; or
- 3.5.9 any other **Act of Parliament** specified as an **Excluded Act** by Endorsement to this **Policy**.

3.6 **Fraud & Dishonesty**

arising out of, based upon or attributable to any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of any **Insured**. In that event, the **Insurer's** obligation to indemnify the **Insured** will cease and the **Insured** will reimburse all sums paid in connection with that **Claim**. Provided that this Exclusion does not apply to any **Insured** who has not committed or condoned the fraudulent, dishonest, malicious, wilful or criminal act or omission.

3.7 **Health & Safety in Employment Act 1992**

for any **Fine** or infringement fee (except for **Reparation Orders**) ordered to be paid by the **Insured** following conviction under the Health and Safety in Employment Act 1992 or any amending or replacing legislation.

3.8 **Inland Revenue Investigation**

arising out of, based upon, attributable to or as a result of any action, proceeding, inquiry, investigation or prosecution taken against the **Insured** by the Inland Revenue Department or any other revenue-collecting statutory authority.



3.9 **Intentional Acts**

arising out of, based upon, attributable to or as a result of an **Insured's** intentional, wilful or reckless disregard of the provisions of any **Act of Parliament**. Provided that this Exclusion does not apply to any **Insured** who has not intentionally, wilfully or recklessly disregarded or condoned the intentional, wilful or reckless disregard of the provisions of the **Act of Parliament**.

3.10 **Jurisdiction**

arising from, based upon, attributable to, as a result of or directly or indirectly attributable to or in consequence of any judgment entered in any Court other than a New Zealand Court or any debt incurred by the **Insured** as a result of such judgment.

3.11 **Monetary Amounts Paid or Offered before Sentence**

for any sum paid, or offered to be paid, by the **Insured** without the prior written consent of the **Insurer**, to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an **Event**.

3.12 **Nuclear Liability**

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

3.12.1 nuclear weapons material; or

3.12.2 radiation or contamination by radioactivity from any material or nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, and for purposes of this Exclusion combustion includes any self-sustaining process of nuclear fission; or

3.12.3 the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof,

including, but not limited to, any use of such material or nuclear fuel, assembly or component in conjunction with any act of terrorism.

3.13 **Prior Claims**

3.13.1 made prior to or pending at the inception of this **Policy**; or

3.13.2 arising out of, based upon or attributable to any **Event** known to the **Insured** prior to inception of the **Policy**; or

3.13.3 arising out of pending or prior litigation derived from the same or essentially the same facts as might be alleged in that prior or pending litigation as at the inception of this **Policy**.

3.14 **Retroactive Date**

arising directly or indirectly out of an **Event** which occurred prior to the **Retroactive Date**.

3.15 **Sanctions**

or provide any cover or benefit, to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.



3.16 **Taxes**

except as set out in General Condition 5.6 (Goods and Services Tax), for the payment of any tax, including any **Fine** or penalty resulting from the failure to pay any tax.

3.17 **War/Terrorism**

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

Section 4 CLAIMS CONDITIONS

4.1 **Co-operation**

4.1.1 The **Insurer** will at all times have the right, but not the duty, to associate with the **Insured** in the investigation, defence or settlement of any **Claim** that may be covered under this **Policy**. The **Insured** will co-operate with the **Insurer** and provide the **Insurer** with all information it may reasonably require in the investigation, defence or settlement of any **Claim**. The failure of one **Insured** or the **Company** to comply with this provision will not impair the rights of any other **Insured** under this **Policy**.

4.1.2 The **Insured** waives all claims to legal professional privilege between themselves and any solicitor retained by the **Insurer** to act on the **Insured's** behalf in relation to any **Claim**. The **Insured** will allow the solicitor to disclose to the **Insurer** any information obtained in the course of the solicitor's duties.

4.2 **Defence / Settlement / Allocation**

4.2.1 The **Insured**, and not the **Insurer**, will have the duty to defend all **Claims**.

4.2.2 As a condition precedent to the right to be indemnified under this **Policy**, the **Insured** (and any person, firm or company acting for or on the **Insured's** behalf) will not incur any **Defence Costs**, admit liability for, compromise, settle or make any offer or payment in respect of any **Claim** or other matter for which coverage is provided under this **Policy** without the **Insurer's** prior written consent, which consent will not be unreasonably withheld or delayed. Only those settlements, judgments and **Defence Costs** consented to by the **Insurer**, and judgments from **Claims** defended in accordance with the **Policy** will be payable under this **Policy**.

4.2.3 The **Insurer** will advance **Defence Costs** on a current basis but no later than 60 days after the **Insurer** receives itemised invoices for those **Defence Costs**; provided that to the extent it is finally established that any such **Defence Costs** are not covered under this **Policy**, the **Insured**, severally according to their interests, will repay those **Defence Costs** to the **Insurer**.

4.2.4 The **Insured** will not be required by the **Insurer** to contest any legal proceedings against the **Insured** unless a Queen's Counsel (to be mutually agreed upon by the **Insurer** and the **Insured** and in the absence of agreement to be determined by the President of the New Zealand Law Society), advises that the proceedings can be contested with a reasonable prospect of success. The costs of that advice will be borne by the **Insurer**.



- 4.2.5 If the **Insured** does not agree with the decision by the **Insurer** to settle a **Claim**, the **Insured** can elect to contest the **Claim** at its own expense but the liability of the **Insurer** will not exceed the amount for which the **Claim** could have been settled in the opinion of a Queen's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** and in the absence of agreement to be determined by the President of the New Zealand Law Society). The costs of that advice will be borne by the **Insurer**.
- 4.2.6 The **Insurer** will pay all **Defence Costs** incurred up to the date the **Insured** notifies the **Insurer** in writing of its election under this clause of the **Policy**, and will pay the **Insured** (subject to the **Retention**) the amount for which the **Claim** could have been so settled. The **Insured** expressly agrees that the **Insurer's** liability in respect of that **Claim** will then be at an end.
- 4.2.7 In the event of a **Claim** which involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** agree to use their best endeavours to determine a fair and proper allocation of **Defence Costs**, **Fines** and **Reparations Orders** covered under this **Policy**, based on the relative legal and financial exposures of the parties to covered and uncovered matters. If the **Insured** and the **Insurer** cannot agree on an allocation of **Defence Costs**, the **Insurer** will advance **Defence Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined. In that event, that allocation will be applied retroactively to all **Defence Costs**.

4.3 **Fraudulent Claims**

If any **Insured** makes a claim under this **Policy** knowing that claim to be false or fraudulent as regards amounts or otherwise, or uses fraudulent devices to advance what is otherwise a valid claim, that claim by that **Insured** will be excluded under the **Policy** and the **Insurer** will have the right to be reimbursed by that **Insured** for any payments made (including **Defence Costs**) in connection with that claim. Provided that this does not exclude cover for any related claim made by any other **Insured** which is not knowingly false or fraudulent.

4.4 **Notification of Claims**

- 4.4.1 The **Insured** must, as a condition precedent to the obligations of the **Insurer** under this **Policy**, give the **Insurer** notice in writing of (i) any **Claim** or (ii) receipt of notice from any person of an intention to make a **Claim** against any **Insured**, which is first made during the **Policy Period**. Any notice provided pursuant to this paragraph must be given as soon as practicable after the risk manager or in-house general counsel or functional equivalent of the **Parent Company** first learns of the **Claim** or intention to make a **Claim**, but in no event later than 60 days after the end of the **Policy Period** or **Discovery Period** (as applicable).
- 4.4.2 All notifications must be in writing and addressed via the **Insured's** insurance broker or to the **Insurer** as specified at item 9 of the **Schedule**.
- 4.4.3 If the **Insured** fails to provide timely notice to the **Insurer**, the **Insurer** will not be entitled to deny coverage based solely upon late notice unless the **Insurer** can demonstrate its interests were materially prejudiced by reason of the late notice.

4.5 **Related Claims**

- 4.5.1 More than one **Claim**, involving the same **Event** or related **Events** of one or more **Insured**; and/or



- 4.5.2 any subsequent **Claim** alleging, arising out of the same or related facts or circumstances or series of causally or logically related facts or circumstances; and/or
- 4.5.3 any subsequent **Claim** alleging any offence under an **Act of Parliament** punishable by conviction which is the same or related to any other offence in that previously notified **Claim**,

will be considered a single **Claim**, and only one **Retention** will be applicable to such single **Claim**.

Section 5 GENERAL CONDITIONS

5.1 Authorisation

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provide for in this **Policy** (except the giving of notice to apply for any **Discovery Period**), the payment of premiums and the receipt of any return premiums that may become due under this **Policy**, and the agreement to and acceptance of Endorsements, and the **Insureds** agree that the **Parent Company** will act on their behalf.

5.2 Bankruptcy

Bankruptcy or insolvency of the **Company** or any **Insured** will not relieve the **Insurer** of any of its obligations under this **Policy**. In that event the **Insured** hereby waives and releases any automatic stay or injunction in any proceeding which may apply to this **Policy** or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from any such stay or injunction.

5.3 Cancellation

5.3.1 This **Policy** may be cancelled by the **Parent Company** at any time by prior written notice to the **Insurer** stating the effective time of the cancellation, provided that date is at least 30 days after the date the notice is given. Upon cancellation, the **Insurer** will be entitled to retain the pro rata proportion of the premium calculated from the effective date of such cancellation, unless paragraph 5.3.2, applies, in which case the entire premium for this **Policy** will be deemed fully earned.

5.3.2 This **Policy** may be cancelled by the **Insurer** only for non-payment of premium. In the event of non-payment of premium, the **Insurer** will give at least 10 days' written notice of cancellation. If the **Parent Company** pays in full the premium due within the notice period, the **Insurer's** notice of cancellation will be ineffective. If the premium is not paid in full within the notice period, the **Policy** may be cancelled as of inception.

5.4 Currency

All premiums, limits, **Retentions** and other amounts under this **Policy** are and will be expressed and payable in the currency of New Zealand.



5.5 **Entire Agreement**

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

5.6 **Goods and Services Tax**

5.6.1 Where, upon receiving any indemnity payment under this **Policy**, the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act), the **Insurer** will indemnify the **Insured** for the amount of that tax. The indemnity under this paragraph is payable by the **Insurer** in addition to the **Limits of Indemnity**.

5.6.2 All amounts indicated in this **Policy** and **Schedule** are exclusive of Goods and Services Tax.

5.7 **Innocent Non-Disclosure and Material Non-Disclosure**

5.7.1 The **Insured** represents and acknowledges that statements made and information in the **Proposal** are accurate and complete, are the basis of this **Policy** and are incorporated in and constitute part of this **Policy**. The **Proposal** will be construed as a separate **Proposal** for each **Insured**.

5.7.2 With respect to any statements or other information provided in the **Proposal**, the knowledge possessed by any one **Insured** will not be imputed to any other **Insured**.

5.7.3 If any statement in the **Proposal** was (i) not accurate and complete and (ii) either was made with the intent to deceive or materially affected the acceptance of the risk or hazard assumed by the **Insurer** under this **Policy**, then the **Insurer** will not be liable to indemnify the **Insured** in connection with that portion of any **Claim** based upon, arising out of or in consequence of the facts that were not accurately and completely disclosed in the **Proposal**, to the extent such **Defence Costs, Fines and Reparation Orders** are incurred by:

(a) an **Insured** who knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Proposal**; or

(b) any **Company**, if its chief executive officer, chief financial officer or functional equivalent official knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Proposal**.

5.8 The **Insurer** will not be entitled under any circumstances to rescind or void this **Policy** in whole or in part.

5.9 **Jurisdiction**

This **Policy** is governed by the laws of New Zealand whose Courts have exclusive jurisdiction in any dispute regarding this **Policy** or the interpretation of it.



5.10 **Limits of Indemnity**

5.10.1 The maximum amount payable by the **Insurer** under this **Policy** in respect of any single **Claim** as defined in Claims Condition 4.5 (Related Claims) (excluding **Defence Costs**) will not exceed the **Limit of Indemnity** specified at item 4A of the **Schedule**. The inclusion of more than one **Insured** under this **Policy** does not operate to increase the total amount payable by the **Insurer** under this **Policy**.

5.10.2 The maximum liability of the **Insurer** for **Defence Costs** will be the amount specified at item 4B of the **Schedule**. **Defence Costs** will not be part of and are separate to the **Limit of Indemnity** specified at item 4A of the **Schedule**. Payment of **Defence Costs** will not reduce the **Limit of Indemnity** for losses other than **Defence Costs**.

5.11 **Mergers, Acquisitions and Sales of the Company or any Subsidiary**

5.11.1 **Merger or Acquisition of Parent Company**

If during the **Policy Period** any of the following events occur:

- (a) the **Parent Company** sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities, or merges or consolidates with another entity such that the **Parent Company** is not the surviving entity; or
- (b) any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Parent Company**,

then coverage under this **Policy** will continue until expiration of the **Policy Period**, but only for **Events** which take place prior to the effective date of such transaction. The entire premium for this **Policy** will be deemed earned as of the date of the transaction.

5.11.2 **Acquisition of a Subsidiary**

- (a) Except as set out in the following paragraph 5.11.2(b), if before or during the **Policy Period** any entity qualifies as a **Subsidiary**, that **Subsidiary** and its **Insureds** will be **Insureds**, but only with respect to **Events** occurring or allegedly occurring after that entity qualified as a **Subsidiary**.
- (b) If an entity first qualifies as a **Subsidiary** during the **Policy Period** and if at that time that **Subsidiary's** total assets exceed 25% of the total consolidated assets of the **Parent Company** as set out in the **Parent Company's** most recent audited consolidated financial statements, then coverage under this **Policy** for such **Subsidiary** and its **Insureds** as set out in the preceding paragraph will cease 90 days after that entity first qualifies as a **Subsidiary** unless:
 - (i) the **Parent Company** within such 90 days provides the **Insurer** with written notice of the creation or acquisition;
 - (ii) the **Parent Company** and the **Insurer** agree on any revisions to the **Policy** either party may require; and
 - (iii) the **Parent Company** pays any additional premium required by the **Insurer** as a result of the addition of the new **Subsidiary**.



5.11.3 **Cessation of a Subsidiary**

If during or prior to the **Policy Period** any entity ceases to be a **Subsidiary**, then coverage for that former **Subsidiary** and its **Insureds** under this **Policy** will only be available, subject to all other terms and conditions of this **Policy**, for **Events** occurring or allegedly occurring prior to the date it ceased to qualify as a **Subsidiary**.

5.12 **Order of Payments**

5.12.1 The **Insurer** will be entitled to pay **Defence Costs, Fines** and **Reparations Orders** as they become due and payable under this **Policy** without consideration of other future payment obligations.

5.12.2 The bankruptcy or insolvency of any **Insured** will not relieve the **Insurer** of any of its obligations to prioritise payment of covered **Defence Costs, Fines** and **Reparations Orders** under this **Policy** as set out above.

5.13 **Other Insurance**

Where cover is provided under this **Policy** and a Directors and Officers policy also provided by the **Insurer** then this **Policy** will respond first to any **Claim**.

In all other circumstances the insurance as is provided under this **Policy** will apply only as excess over any other valid and collectible insurance.

5.14 **Plurals, Headings and Titles**

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular include the plural and vice versa. In this **Policy** words in bold typeface have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

5.15 **Retention**

5.15.1 The **Retention** applies to **Defence Costs, Fines** and **Reparations Orders** resulting from each **Claim**.

5.15.2 The **Insurer** will only pay for the amount of any **Defence Costs, Fines** and **Reparations Orders** beyond the **Retention**. The **Retention** is to be borne by the **Company** and will remain uninsured.

5.15.3 If a **Company** refuses or fails after an **Insured Person's** request to indemnify or advance covered **Loss** as it falls due or is payable or if a **Company** is unable to indemnify or advance covered **Loss** due to its insolvency, the **Insurer** will pay such covered **Loss** without applying the applicable **Retention**. If the **Insurer** pays under this **Policy** any **Loss** incurred by an **Insured Person** for which the **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** will reimburse the **Insurer** for such amounts up to the applicable **Retention**, and such amounts will become due and payable as a direct obligation of the **Company** to the **Insurer**.



5.16 **Subrogation**

- 5.16.1 In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all of the **Insured's** rights of recovery and the **Insured** will execute all papers required and will do everything that may be necessary to secure those rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. The **Insurer** will not exercise any available right of subrogation against an **Insured** under this **Policy** unless Exclusion 3.6 (Fraud & Dishonesty) or Exclusion 3.9 (Intentional Acts) applies to that **Insured**.
- 5.16.2 In the event the **Insurer** recovers amounts it paid under this **Policy**, the **Insurer** will reinstate the applicable **Limit(s) of Indemnity** of this **Policy** to the extent of the recovery, less the **Insurer's** costs incurred in obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this **Policy**.