

Specialist Professions

Combined Liability Policy

Insurance delivered differently
Driven by small business

AUZI[®]
I n s u r a n c e

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1 Important Notices

1.1 About Us

This insurance is underwritten by certain Underwriters at Lloyd's led by MS Amlin Underwriting Limited, Syndicate 2001.

MS Amlin Underwriting Limited is authorised by the Prudential Regulation Authority and is regulated by the Financial Conduct Authority and the Prudential Regulation Authority under reference number 204918. MS Amlin Underwriting Limited is registered in England No. 2323018. Registered office: The Leadenhall Building, 122 Leadenhall Street, London, EC3V 4AG.

1.2 Duty of Disclosure

Before entering into a contract of general insurance with **Us**, **You** have a duty, under the Insurance Contracts Act 1984 (Cth), to disclose to **Us** every matter that **You** know, or could reasonably be expected to know, that is relevant to **Our** decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose any such matters to **Us** before renewing, extending, varying or reinstating a contract of general insurance.

However, that duty does not require **You** to disclose any matter:

- a. that diminishes the risk to be undertaken by **Us**;
- b. that is common knowledge;
- c. that **We** know or, in the ordinary course of **Our** business, ought to know;
- d. in respect of which **We** have provided a waiver.

Non-disclosure

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under the contract in respect of a claim, or **We** may cancel the contract.

If **Your** non-disclosure is fraudulent, **We** may avoid the contract from its inception.

1.3 Renewing the Policy

This **Policy** will terminate at the end of the **Policy Period**. If **You** wish to renew the insurance for a subsequent **Policy Period**, a renewal declaration will need to be completed before the end of the **Policy Period**.

1.4 Preservation of the Insurer's Rights of Recovery / Subrogation

The **Policy** contains provisions to the effect that **You** shall not surrender any right of recovery that **You** may have against another party without **Our** written consent. Failure to comply with this provision may permit **Us** to reduce **Our** liability in respect of a payment under the **Policy**.

1.5 Professional Liability - Claims-made and notified coverage

The cover provided by the Professional Liability section of this **Policy** applies on a 'claims-made and notified' basis. This means that the **Policy** responds to:

- a. any **Claim** first made against **You** during the **Policy Period** and notified to **Us** during the **Policy Period**, provided that **You** were not aware, at any time prior to the **Policy** inception date, of facts or circumstances which would have caused a reasonable person in their position to believe that a **Claim** may be made against them; and
- b. any **Claim** made against **You** after the expiration date of the **Policy**, provided such **Claims** arise out of facts that **You** have notified to **Us** in writing during the **Policy Period** in accordance with Section 40(3) of the Insurance Contracts Act 1984. The facts that **You** may decide to notify under that provision are those which might reasonably give rise to a **Claim**. That provision requires that any such notification must be given as soon as reasonably practicable after **You** become aware of the facts and prior to the time at which the **Policy** expires. If **You** give a written notification of facts during the **Policy Period** and that notification complies with the requirements of Section 40(3) of the Insurance Contracts Act 1984, the **Policy** will respond even though a **Claim** arising from those facts is made against **You** after the **Policy** has expired.

1.6 Public and Products Liability – Losses Occurring coverage

The cover provided by the Public and Products Liability section of this **Policy** applies on a 'losses occurring' basis. This means that the **Policy** responds to **Personal Injury** and **Property Damage** which first occurs during the **Policy Period**.

1.7 Limit of Liability and Excess

All **Claims** are subject to the applicable **Limit of Liability** and the applicable **Excess**.

1.8 Retroactive Date

The **Policy** contains a **Retroactive Date**. This means that cover is excluded for any **Claim** arising from an act, error or omission committed or occurring prior to the **Retroactive Date**.

1.9 Policy Interpretation

Words shown in bold have a particular defined meaning. **You** should refer to the 'Definitions' section to obtain the full meaning of such terms. In addition to the Definitions, where the context requires:

- a. Words in the singular will include the plural and vice versa;
- b. Words expressed in one gender shall include all genders;
- c. References to 'a person' shall include any individual, company, partnership or any other legal entity;
- d. Any phrase introduced by the term 'include', 'including', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term;
- e. References to a statute, regulation or trade terms of contract will be construed to include all its amendments or replacements.

Please note that all headings within the **Policy** are included for convenience only and will not form part of this **Policy**.

1.10 Several Liability

The liability of an Insurer under this contract is several and not joint with other Insurers party to this contract. An Insurer is liable only for the proportion of liability it has underwritten. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer, nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion.

A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA.

The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Proportion of Liability

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together).

A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred. Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

1.11 Dispute Resolution

About Lloyd's

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent.

In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia. Lloyd's has adopted the General Insurance Code of Practice subject to certain specific qualifications. You can obtain a copy of the code at www.codeofpractice.com.au

Our aim is to provide the highest service to our Australian policyholders, and, to this end, we have developed the following procedures for the fair handling of complaints from Lloyd's policyholders.

Stage 1

Any enquiry or complaint relating to a Lloyd's Policy or claim should be addressed to either your insurance intermediary or to the administrator handling your claim in the first instance – in most cases this will resolve your grievance.

They will respond to your complaint within 10 business days provided they have all necessary information and have completed any investigation required. Where further information, assessment or investigation is required, they will agree to reasonable alternative timeframes with you. You will also be kept informed of the progress of your complaint.

Stage 2

Depending on the outcome of our review, if we are unable to resolve the matter to your satisfaction, we may refer your complaint to Lloyd's Australia. If you are not satisfied with the way your complaint has been dealt with, you can contact Lloyd's:

Lloyd's Australia Limited
Suite 1603 Level 16, 1 Macquarie Place, **Sydney NSW 2000**
Telephone: +61(2)82980783
Email: ldraustralia@lloyds.com

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.

External Dispute Resolution

You may refer your complaint to AFCA at any time. If your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint, AFCA may review it, subject to its Rules.

AFCA can be contacted by:

Post: GPO Box 3, **Melbourne VIC 3001**

Phone: 1800 931 678

Email: info@afca.org.au

More information can be found on their website www.afca.org.au

AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between you and your insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred to AFCA within 2 years of the date of our final decision, unless AFCA considers special circumstances apply. Determinations made by AFCA are binding upon us.

Customers not eligible for referral to AFCA, may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

This service is free of charge to policyholders.

In addition to your rights under this section, we agree that:

- a. any summons notice or process to be served upon us 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 our behalf;

- b. if a suit is instituted against any of us, all parties participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

1.12 Data Protection

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this.

This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on www.msamlin.com/en/site-services/data-privacy-notice.html

A paper copy of the Data Privacy Notice can be obtained by contacting the Data Protection Officer by email (dataprotectionofficer@msamlin.com) or at the below address:

Data Protection Officer
MS Amlin Corporate Services,
The Leadenhall Building,
122 Leadenhall Street,
London, EC3V 4AG

2 Definitions

2.1 Abuse

Means:

- a. Any act of hurting or injuring mentally or physically by maltreatment or ill use;
- b. Repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- c. Physical abuse, molestation, mistreatment or maltreatment of an intimate or sexual nature, including, but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent;
- d. The sharing, transmission, distribution or dissemination, as **Data** or by other means, of:
 - i. explicit or pornographic material;
 - ii. intimate or personal images of any person without that person's prior consent, irrespective of whether the person consented to the creation of such images.

2.2 Act of Terrorism

Means any act, including, but not limited to, the use of force or violence or the threat thereof of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

2.3 Advertising Activities

Means only those activities undertaken by **You** or on **Your** behalf to advertise **Products** and services offered by **You** and does not include any publications or comments on social media platforms that concern matters of general interest that are not directly related to such sale of **Products** and services.

2.4 Advertising Injury

Means any actual or alleged:

- a. libel, slander or defamation;
- b. breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth) or any Fair-Trading Legislation;
- c. infringement of any patent, copyright, title, trademark or slogan, or passing-off;
- d. unfair competition, piracy or misappropriation of ideas;
- e. invasion of privacy,

committed in any advertisement, publicity article, broadcast or telecast and caused by or arising out of any **Advertising Activities** conducted by **You** or on **Your** behalf during the **Policy Period**.

2.5 Aircraft

Means any craft or object designed to transport persons or property through air or space.

2.6 Bodily Injury

Means bodily injury, death, disease and illness which shall include mental anguish, mental injury and shock.

2.7 Building Standard

Means the standards set by the Commonwealth Government of Australia or by any authority acting on its behalf, or by any State or Territory Government of Australia or any authority acting on their behalf, including but not limited to all the relevant provisions of:

- a. the National Construction Code of Australia;
- b. the Building Code of Australia;
- c. Australian Standards;
- d. approved conditions of use or application;
- e. any other applicable law or regulation.

2.8 Business

Means the 'Business Activity' described in the **Schedule** and shall include the following activities where incidental to **Your** business:

- a. the provision and management of catering, social, sports, educational, medical, dental and welfare services for the benefit of the **Named Insured's Employees**; and
- b. fire, security, first aid and ambulance services provided by **You** for the benefit of the **Named Insured's Employees**; and
- c. the ownership, repair, maintenance and decoration of the **Named Insured's** premises; and
- d. private work carried out by any **Employee** (with the consent of the **Named Insured**) for any director, partner or senior official of the **Named Insured**.

2.9 Change of Control

Means when any person or entity, or group of persons or entities, acquires greater than 50% of the equity of the **Named Insured** and/or the right to elect or appoint the majority of the board of directors of the **Named Insured** or persons to an equivalent management function.

2.10 Claim

Means any written demand or legal proceedings for **Compensation** first made or brought against any **You** which may result in the payment of any amount under this **Policy**.

2.11 Communicable Disease

Means any disease, virus, bacterium, organism or parasite which can be transmitted from any organism to another organism, whether living or not, including, but not limited to, where:

- a. the method of transmission is direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- b. the disease, substance or agent can cause or threaten **Bodily Injury**, illness, emotional distress, damage to human health, human welfare or **Property Damage**.

2.12 Compensation

Means a monetary settlement, judgment or award of monetary compensation that **You** are legally obligated to pay, including pre-judgment interest, post judgment interest and claimant's costs.

2.13 Compensatory Civil Penalty

Means a monetary penalty imposed by a court, tribunal, or regulatory authority that is:

- a. primarily intended to compensate for actual economic loss suffered by an identified person or class of person
- b. calculated by reference to such loss; and
- c. payable to those who suffered the loss (or to a fund for their benefit).

Compensatory Civil Penalty does not include exemplary/punitive damages, criminal fines, or penalties intended primarily to punish or deter.

2.14 Computer System

Means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, **Data** storage device, networking equipment or back up facility, owned or operated by **You** or any other party.

2.15 Cyber Act

Means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

2.16 Cyber Incident

Means:

- a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**;
- b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

2.17 Data

Means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

2.18 Data Protection Law

Means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

2.19 Defence Costs

Means all reasonable and necessary fees, costs, expenses and disbursements incurred by **Us** or by **You** with **Our** prior written consent (such consent not to be unreasonably withheld) in the investigation, adjustment, defence and/or appeal of a **Claim** covered under this **Policy**.

Defence Costs does not include the salaries, wages or any additional remuneration of any employee, general business expenses or overheads. **We** have no obligation to pay any salaries, wages, overheads and other expenses incurred by **You** in the course of cooperating in the investigation and defence of any **Claim**.

2.20 Denial of Service Attack

Means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of any network, network service, network connectivity or **Computer System**. Denial of Service Attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

2.21 Documents

Means all documents directly connected with the conduct of **Professional Services** belonging to **You** or for which **You** are legally responsible and whilst in **Your** custody. Documents does not mean and does not include **Data**, stamps, currency, coins, bank notes and bullion, travellers' cheques, cheques, postal orders, money orders, securities and any other negotiable instrument.

2.22 Employee

Means any person who is under a contract of service or apprenticeship with the **Named Insured** or any **Subsidiary**.

2.23 Excess

Means the amount stated as the 'Excess' in the **Schedule**.

2.24 Extended Reporting Period

Means the period commencing immediately following the end of the **Policy Period** and finishing sixty (60) days thereafter or when **You** first effect another insurance policy providing professional indemnity insurance (whichever is the earlier).

2.25 Investigation

Means any official investigation, examination, inquiry or hearing into the provision of **Professional Services** by the **Named Insured** or a **Subsidiary**, issued by an official body or institution empowered by law to investigate such services, of which written notice is first received **You** during the **Policy Period** and which requires a response from, or attendance by **You**. Investigation does not mean and does not include:

- a. a routine supervision, inspection, compliance audit or similar review;
- b. an industry-wide proceeding, investigation, inquiry or hearing.

2.26 Limit of Liability

Means the amount stated in the **Schedule** as the 'Limit of Liability' which is the maximum amount **We** will pay under this **Policy**.

2.27 Named Insured

Means the person or entity stated as the 'Named Insured' in the **Schedule**.

2.28 Occurrence

Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended from **Your** standpoint. A series or number of events having the same original cause or attributable to the one source shall constitute one occurrence.

2.29 Other Insurance

Means:

- a. the policy stated in the **Schedule** as 'Other Insurance'; and
- b. any renewal or replacement of the policy stated in the **Schedule** as 'Other Insurance'; and
- c. any policy of which the policy stated as 'Other Insurance' in the **Schedule** is a renewal or replacement.

2.30 Personal Injury

Means:

- a. **Bodily Injury**;
- b. False arrest, false imprisonment, wrongful detention or malicious prosecution;
- c. Wrongful entry, wrongful eviction;
- d. Assault and battery committed for the purpose of protecting persons and/or property.

2.31 PFC/PFAS

Means perfluorinated compounds (PFC) or per- and polyfluoroalkyl substances (PFAS) including, but not limited to, perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), perfluorobutyric acid (PFBA), perfluorobutane sulfonic acid (PFBS), perfluoropentanoic acid (PFPeA), perfluorohexane sulfonic acid (PFHxS), GenX, ca (perfluorinated carboxylic acid), ADONA, perfluorohexanoic acid (PFHxA), perfluoroheptanoic acid (PFHpA), perfluorooctane sulfonamide (PFOSA), perfluorodecanoic acid, (PFDA), perfluorodecane sulfonate (PFDS), perfluoroundecanoic acid (PFUnA), perfluorododecanoic acid (PFDoA), perfluorotridecanoic acid (PFTrDA), perfluorotetradecanoic acid (PFTeDA), or 6:2 fluorotelomer sulfonate (6:2 FTS) or any associated by-products, salts, isomers, esters, compounds, derivatives, acids, alcohols, precursor chemicals or related higher homologue chemicals.

2.32 Policy

Means this policy wording, any endorsements to it and the **Schedule**.

2.33 Policy Period

Means the period of time stated as the 'Policy Period' in the **Schedule**.

2.34 Pollution

Means discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste into or upon land or any structure on land, the atmosphere or any ground water, surface water or coastal waters.

2.35 Pollution Incident

Means **Pollution** which arises from a sudden, unexpected and unintended event from **Your** standpoint, and which takes place in its entirety at a specific time and place during the **Policy Period**. All **Pollution**, which arises out of any one **Pollution Incident** is deemed to have occurred at the time such incident takes place.

2.36 Products

Means any physical property after it has left **Your** custody or control, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by **You** or on **Your** behalf.

2.37 Professional Services

Means the professional advice and professional services provided in connection with the 'Business Activity' described in the **Schedule**.

2.38 Property Damage

Means physical damage to or destruction of tangible property, including the loss of use thereof.

2.39 Proportionate Liability Legislation

Means the Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Competition and Consumer Act 2010 (Cth) Part VIA, Development Act 1993 (SA) s72 and Building Act 2004 (ACT) s141, and any similar legislation, all as amended from time to time.

2.40 Retroactive Date

Means the date stated as the 'Retroactive Date' in the **Schedule**.

2.41 Schedule

Means the **Schedule** attaching to and forming part of this **Policy**.

2.42 Submission

Means all application forms, supplemental application forms, questions or question sets, any attachments thereto and all other materials submitted to **Us** by **You** or on **Your** behalf in connection with the underwriting of this **Policy**, any endorsement thereto or a policy for which this **Policy** is a renewal or replacement.

2.43 Subsidiary

Means a subsidiary, as defined in the Corporations Act 2001 (Cth), of the **Named Insured** which is or was a subsidiary at the commencement date of the **Policy Period**.

2.44 Territorial Limits

Means the territory stated in the **Schedule**.

2.45 Vehicle

Means any machine on wheels or self-laid tracks, designed to be propelled other than by manual or animal power.

2.46 We/Us/Our

Means the underwriters stated in the **Schedule**.

2.47 You/Your

Means:

- a. The **Named Insured**;
- b. Any **Subsidiaries**;
- c. Any past, present or future **Employee** but only in relation to the conduct of **Professional Services** for or on behalf of the **Named Insured** or a **Subsidiary** whilst they are an **Employee** of that **Named Insured** or **Subsidiary**.

3 Professional Liability Coverage

In consideration of the payment of the premium and in reliance upon the statements made and information provided to **Us** in the **Submission** and subject to all terms, conditions and exclusions of this **Policy**, **We** agree with the **Named Insured** to provide the following coverage:

INSURING CLAUSE

3.1 Civil Liability

We will indemnify **You** up to the **Limit of Liability** for **Compensation** which **You** are legally liable to pay in connection with any **Claim** notified to **Us** during the **Policy Period** arising out of any civil liability incurred in the provision of **Professional Services** within the **Territorial Limits**, including any **Claim** for:

- a. negligence, or breach of a duty to use reasonable care and skill;
- b. libel, slander or defamation;
- c. breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law or any legislation of any State or Territory of the Commonwealth of Australia;
- d. the infringement of any intellectual property, including but not limited to copyright, design right, registered design or trademark;
- e. loss of, or damage to **Documents**;
- f. any misstatement, misrepresentation or misleading conduct which breaches the terms of the Trade Practices Act 1974 (Cth) or similar Fair-Trading legislation enacted in Australia or New Zealand;
- g. breach of any duty of confidence, invasion of privacy, or violation of any other legal protections for personal information;
- h. any act, error or omission by any consultant or subcontractor acting for **You** for whose actions **You** are legally liable.

3.2 Advancement of Defence Costs

We will also pay **Defence Costs** in respect of any **Claim** for which cover is provided under insuring Clause 3.1 'Civil Liability' above or where applicable, under any extension.

We will not pay **Defence Costs** for any part of a **Claim** not covered under Insuring Clause 3.1 'Civil Liability' above or otherwise under any extension.

AUTOMATIC EXTENSIONS OF COVERAGE

We agree with the **Named Insured** to extend the cover under this **Policy** as stated in each of the following extensions subject to the terms, conditions and exclusions of this **Policy** unless otherwise expressly stated. However, the inclusion of any of the following extensions does not increase the **Limit of Liability** and any sub-limit specified is part of and not in addition to the **Limit of Liability** unless specifically stated otherwise.

3.3 Compensatory Civil Penalties

We will indemnify **You** for any **Compensatory Civil Penalty**, other than an award of damages, payable by **You** where such penalty is awarded pursuant to a **Claim** notified to **Us** during the **Policy Period** arising out of a civil liability incurred in the provision of **Professional Services**. However, no cover will be provided in respect of any **Compensatory Civil Penalty** arising out of, resulting from, or in any way attributable to:

- a. intentional or wilful non-compliance with any legal notice, action or proceeding;
- b. gross negligence or recklessness;
- c. taxes or duties, or non-compensatory amounts calculated by reference to taxes or duties.

The sub-limit for 'Compensatory Civil Penalties' stated in the **Schedule** is the maximum amount **We** will pay under this extension.

3.4 Continuous Cover – Renewal Benefit

If **You** were aware of any act, error, omission, fact, information or circumstance prior to the inception of the **Policy Period** that could reasonably have been expected to give rise to a **Claim** or payment under this **Policy** and such act, error, omission, fact, information or circumstance was not notified to **Us** prior to the commencement of the **Policy Period** then exclusion 3.21 'Prior Acts' will not apply to such **Claim** or payment. However:

- a. payment under this extension will only be made where:
 - i. the failure to notify such act, error, omission, fact, information or circumstance was not a result of fraudulent misrepresentation or fraudulent non-disclosure by **You**; and
 - ii. such act, error, omission, fact, information or circumstance has not previously been notified to any other professional liability insurer; and
 - iii. **You** have held a professional liability policy with **Us** without interruption from the time when the act, error, omission, fact, information or circumstance could have been notified under the previous policy until the time when the act, error, omission, fact, incident or circumstance is notified to **Us**: and
- b. the **Limit of Liability** (including any sub-limit) and **Excess** applicable to such **Claim** shall be that shown in the policy of insurance in force at the time **We** first became aware of such act, error, omission, fact, information or circumstance; and
- c. **We** will be entitled to reduce its liability to the extent of any prejudice suffered as a result of **Your** failure to notify the act, error, omission, fact, information or circumstance giving rise to the **Claim** prior to the **Policy Period**.

3.5 Contractual Liability – Hold Harmless

We will indemnify **You** for **Compensation** which **You** are legally liable to pay in connection with any **Claim** notified to **Us** during the **Policy Period** under an indemnity or hold harmless term of a contract for the provision of **Professional Services** but only where and to the extent that such liability arises solely and directly out of the provision of those **Professional Services**.

3.6 Court Attendance Costs

We will pay for the reasonable costs and expenses incurred by **You** with **Our** prior written consent (such consent will not be unreasonably withheld or delayed), where any **Employee** is required attend a court, arbitration or an adjudication hearing as a witness in connection with a **Claim** for which cover is provided under this section (Section 3 'Professional Liability Coverage') of the **Policy**. The maximum amount **We** will pay under this extension is AUD 500 per day, per person, up to the sub-limit for 'Court Attendance Costs' stated in the **Schedule**.

3.7 Dishonesty of Employees

We will indemnify **You** in accordance with the terms of this **Policy** for **Compensation** which **You** are legally liable to pay in connection with any **Claim** notified to **Us** during the **Policy Period** arising out of the dishonest actions of any **Employee** in the provision of **Professional Services**. However, no cover will be provided:

- a. to any party who actually commits, condones or ignores such dishonesty; and
- b. for any loss sustained in consequence of any dishonest act or omission after the date of the discovery of, or reasonable cause for suspicion of, dishonest conduct on the part of the person concerned.

3.8 Emergency Defence Costs

We will indemnify **You** for any **Defence Costs** which **You** incur pursuant to Insuring Clause 3.2 'Advancement of Defence Costs' where **Our** prior written consent cannot reasonably be obtained, provided that:

- a. **Our** written consent is obtained within thirty (30) days of the first of any **Defence Costs** being incurred; and
- b. No indemnity will be provided for **Defence Costs** incurred in respect of any **Claim** for which no cover is provided under this section (Section 3 'Professional Liability Coverage').

The sub-limit for 'Emergency Defence Costs' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period**.

3.9 Extended Reporting Period

In the event that this section (Section 3 'Professional Liability Coverage') of the **Policy** is not renewed then the cover provided by Insuring Clause 3.1 'Civil Liability' will be extended to include any **Claim** first made against **You** and notified to **Us** within the **Extended Reporting Period** but only where the **Claim** arises from **Professional Services** provided by **You** prior to the end of the **Policy Period**. However:

- a. this extension does not extend the **Policy Period**; and
- b. this extension does not apply in the event that the **Policy** is cancelled.

3.10 Investigation Costs

We will indemnify **You** for all reasonable legal costs and expenses incurred with **Our** prior written consent (such consent will not be unreasonably withheld or delayed) for **Your** representation at any **Investigation** where notice of such **Investigation** is first reported to **Us** during the **Policy Period**. The sub-limit for 'Investigation Costs' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period** regardless of the number of **Investigations**.

3.11 Limitation of Liability

General Condition 7.18 'Subrogation' of this **Policy** does not apply in respect of any **Claim** for which any right of recovery or contribution against a third party has been waived, limited or reduced by **You** pursuant to a provision of a written contract between any **Named Insured** and such third party for the provision of **Professional Services**. However, this extension does not apply to any contract (whether written or otherwise) entered into as a result of a dispute which in any way involves **You**.

3.12 Loss of Documents

We will indemnify **You** for all reasonable and necessary costs incurred with **Our** prior written consent (such consent will not be unreasonably withheld or delayed) for the repair, replacement and/or reconstitution of any **Documents** which have been unintentionally destroyed, damaged beyond reasonable use, lost or mislaid during the **Policy Period** and which, after diligent search, cannot be found. The sub-limit for 'Loss of Documents' stated in the **Schedule** is the maximum amount **We** will pay under this extension.

3.13 Loss Mitigation and Rectification

We will indemnify **You** for any reasonable direct costs and expenses incurred in taking action necessary to rectify, or to mitigate the unintended effect of any act, error or omission in the provision of **Professional Services** that would otherwise result in a **Claim** for which cover is provided under this **Policy**. Provided that:

- a. the act, error or omission is first discovered by **You** during the **Policy Period**; and
- b. the act, error or omission is notified to **Us** during the **Policy Period**, together with:
 - i. the reasons that **You** believe such act, error or omission is likely to give rise to the **Claim** that would be covered under this **Policy**; and
 - ii. details of the proposed rectification or mitigation action that will incur the costs and expenses; and
- c. payment under this clause will only be made at **Our** discretion and subject to **Our** prior written consent (such consent is not to be unreasonably withheld or delayed); and

However, **We** will not make any payment under this extension for:

- i. costs and expenses to which **We** have not given prior written consent;
- ii. costs and expenses that are unreasonable having regard to the amount of **Compensation** likely to be incurred in the absence of any mitigation or rectification action.
- iii. indirect costs and expenses, including but not limited to overheads, any of **Your** profits, including but not limited to the loss or diminution of **Your** profit, bonus, incentive payment or opportunity cost;
- iv. costs and expenses of materials or **Professional Services** which result in an increased quality or standard from that specified in the design parameters of the relevant contract.

The sub-limit for 'Loss Mitigation and Rectification' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period**.

3.14 Public Relations Expenses

We will indemnify **You** for the reasonable costs and expenses that **You** incur with **Our** prior written consent (such consent will not be unreasonably withheld or delayed), in seeking advice from a public relations consultant solely for the benefit of protecting **Your** professional reputation where the provision of **Professional Services** by **You** has or could reasonably lead to a **Claim** being made against **You**.

The sub-limit for 'Public Relations Expenses' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period**.

3.15 Reinstatement

In the event that the **Limit of Liability** is entirely exhausted due to payment of any amounts covered under this **Policy**, the **Limit of Liability** will be reinstated in full once only. However:

- a. The reinstated **Limit of Liability** will only apply following the exhaustion of the indemnity limit of any policy of insurance which operates in excess of the original **Limit of Liability**; and
- b. The reinstated **Limit of Liability** will only apply to a **Claim** which does not arise out of and is not connected with, consequent upon or attributable to the source or originating cause of any **Claim** already paid or payable under the original **Limit of Liability**; and
- c. All terms, conditions and exclusions of this **Policy** will continue to apply in the same manner to the reinstated **Limit of Liability**; and
- d. There is no reinstatement of any sub-limit of liability provided under any extension or endorsement.

3.16 Run-Off Cover

In the event that:

- a. the **Named Insured** is acquired by, consolidated with or merged into any other entity, or otherwise ceases to exist or operate during the **Policy Period**; or
- b. the **Named Insured** enters into voluntary bankruptcy, receivership, liquidation or any other form of external administration during the **Policy Period**,

the cover provided under this section (Section 3 'Professional Liability Coverage') of the **Policy** will continue until the expiry of the **Policy Period** or cancellation of this **Policy**, whichever is earlier but only in respect of **Professional Services** provided prior to the date on which such event detailed in subparagraph a. or b. above occurred, unless agreed in writing by **Us**.

3.17 Spouses, Estates and Representatives

We will extend the coverage provided under this **Policy** to include:

- a. in the event of the death, incapacity or bankruptcy of any person included within the definition of **You**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives;
- b. any **Claim** brought against the lawful spouse or domestic partner of any person included within the definition of **You**, as if the **Claim** had been brought against that person.

However, the cover provided under this extension does not apply to any actual or alleged act, error or omission by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner.

EXCLUSIONS APPLICABLE TO THE PROFESSIONAL LIABILITY COVERAGE

The following exclusions apply to the Professional Liability Coverage, in addition to the Policy Exclusions set out in section 5 of this **Policy**.

We will not make any payment under this **Policy** in respect of **Compensation, Defence Costs** or any other amount arising out of, resulting from, or in any way attributable to

3.18 Commercial Risks

- a. Any failure by **You** or any other party acting on **Your** behalf to:
 - i. procure or maintain finance;
 - ii. effect or maintain any form of insurance, surety or bond;
- b. **Your** insolvency, bankruptcy, receivership, administration of financial failure or any trading loss or liability incurred by any business managed or carried on by **You**;
- c. Any actual or alleged refund, reimbursement, restitution or disgorgement of any professional fees, including but not limited to any portion of damages calculated by reference to, or the refund of, professional fees, profits, commissions, costs or other charges paid or payable by or to **You**;
- d. Any guarantee given by **You** for a debt.

3.19 Medical Malpractice

Any treatment or medical services prescribed or administered by **You** or on **Your** behalf.

3.20 Patents and Trade Secrets

The actual or alleged infringement of any patent or patent rights, misuse of any patent or misappropriation of a trade secret.

3.21 Prior Acts

- a. Any act, error, omission, fact, information or circumstance which:
 - i. existed or occurred prior to the commencement of the **Policy Period**; and
 - ii. is causally related to the **Claim**;
- b. Any **Claim** first made or brought against an Insured prior to the commencement of the **Policy Period**;
- c. Any act, error, omission, fact, information or circumstance that has been notified to any insurer of any other insurance policy in force prior to the commencement of the **Policy Period**.

3.22 Product Liability

The sale, supply, repair, alteration, construction, manufacture (including its supervision), installation or maintenance of **Products** by **You** or on **Your** behalf.

3.23 Related Entities

Any **Claim** brought by or on behalf of:

- a. any person or entity included within the definition of **You**;
- b. any party with a financial, executive or managerial interest in any entity included within the definition of **You**, including any parent company;
- c. any party in which any person or entity included within the definition of **You** has a financial, executive or managerial interest, including any **Subsidiary**;
- d. any child, sibling, spouse, partner, parent or dependent of any person included within the definition of **You**;
- e. any trustee of a trust which is owned, controlled or managed by any person included within the definition of **You** or by any child, sibling, spouse, partner, parent or dependent of any person included within the definition of **You**.

3.24 Retroactive Date

- a. Any act, error or omission committed or alleged to have been committed prior to the **Retroactive Date**.
- b. Any act, error or omission which forms part of an inter-related series of acts, errors, omissions or events which commenced or is alleged to have commenced prior to the **Retroactive Date**.

3.25 Specific Professional Services

- a. Any valuation of residential or commercial property;
- b. Any pest inspection or pre-purchase building inspection, including the provision of any verbal or written advice in connection with any such inspection;
- c. The issuance of any construction or development certificate in connection with any building;
- d. The provision of any advice or services by any person acting in the role of a social worker, or the provision any advice or services which would normally be provided by a social worker.

4 Public and Products Liability Coverage

In consideration of the payment of the premium and in reliance upon the statements made and information provided to **Us** in the **Submission** and subject to all terms, conditions and exclusions of this **Policy**, **We** agree with the **Named Insured** to provide the following coverage:

4.1 Public and Products Liability

We will indemnify **You** up to the **Limit of Liability** for **Compensation** which **You** are legally liable to pay for **Personal Injury** or **Property Damage** first happening during the **Policy Period** as a result of an **Occurrence** within the **Territorial Limits** in connection with **Your Business**.

4.2 Advancement of Defence Costs

We will also pay **Defence Costs** in respect of any **Occurrence** for which cover is provided under Insuring Clause 4.1 'Public and Products Liability' above, or where applicable under any extension.

We will not pay **Defence Costs** for any part of a **Claim** not covered under Insuring Clause 4.1 'Public and Products Liability' above or otherwise under any extension.

AUTOMATIC EXTENSIONS OF COVERAGE

4.3 Care, Custody and Control

We will indemnify **You** in respect of:

- a. **Property Damage** to the personal property, tools and effects of any **Employee**, or the clothing and personal effects of any of **Your** visitors;
- b. **Property Damage** to premises or parts of premises (including their contents) leased or rented to or temporarily occupied by **You** for the purpose of the **Business**. However, no coverage is provided under this extension if **You** have assumed the responsibility to insure such premises;
- c. **Property Damage** to any other property temporarily in **Your** possession for the purpose of being worked upon. However, no coverage is provided under this extension for **Property Damage** to that part of any property upon which **You** are or have been working. The sub-limit for 'Care, Custody and Control' stated in the **Schedule** is the maximum amount **We** will pay under this extension.

4.4 Claims Preparation Costs

We will indemnify **You** in respect of reasonable and necessary costs and expenses incurred with **Our** prior written consent (not to be unreasonably withheld) for the preparation of any **Claim** for which cover is provided under this section (Section 4 'Public and Products Liability Coverage' of the **Policy**). However, no cover is provided under this extension for **Defence Costs**.

The sub-limit for 'Claims Preparation Costs' stated in the **Schedule** is the maximum amount **We** will pay under this extension during the **Policy Period**.

4.5 Court Attendance Costs

We will pay for the reasonable costs and expenses incurred by **You** with **Our** prior written consent (such consent will not be unreasonably withheld or delayed), where any **Employee** is required attend a court, arbitration or an adjudication hearing as a witness in connection with a **Claim** for which cover is provided under this section (Section 4 'Public and Products Liability Coverage') of the **Policy**. The maximum amount **We** will pay under this extension is AUD 500 per day, per person, up to the sub-limit for 'Court Attendance Costs' stated in the **Schedule**.

4.6 Cross Liabilities

If the **Named Insured** comprises more than one party, **We** will provide coverage in the same manner and to the same extent as if a separate **Policy** had been issued to each of them, However, the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified.

4.7 Indemnity to Others

We will also indemnify the following persons as if a separate **Policy** had been issued to each of them:

- a. **Your** legal personal representatives, but only in respect of liability incurred by **You**;
- b. any owner of plant hired to **You** but only to the extent required by the conditions of any written contract or agreement of hire;
- c. any officer or member of **Your** catering, social, sports, educational, medical, dental and welfare organisations, fire, security, first aid and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services.

However,

- i. any persons specified above are subject to the terms, conditions and exclusions of this **Policy** (insofar as they can apply) as though they were **You**; and
- ii. the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified.

4.8 Overseas Personal Liability

We will indemnify:

- a. Where the **Named Insured** is a natural person, the **Named Insured**;
- b. Any director, officer or partner of the **Named Insured**;
- c. At the request of the **Named Insured**:
 - i. any other **Employee** normally resident in the Commonwealth of Australia;
 - ii. any spouse of the persons in a. b. or c. i. above who are normally resident in the Commonwealth of Australia and accompanying such persons in a personal capacity;

in connection with any **Occurrence** which takes place in a country outside of the **Territorial Limits** whilst on a temporary visit to such country in connection with the **Business** provided that any such person is not entitled to indemnity under any other policy of insurance, self-insurance or deductible programme effected in **Your** name.

However:

- a. Any person entitled to indemnity under this extension is subject to the terms, conditions and exclusions of this **Policy** (insofar as they can apply) as though they were **You**; and
- b. the **Limit of Liability** is the maximum amount **We** will pay under this extension regardless of the number of persons claiming to be indemnified; and
- c. **We** will not make any payment under this extension in respect of **Compensation, Defence Costs** or any other amount arising out of, resulting from, or in any way attributable to:
 - i. **Property Damage** to property belonging to, or in the care, custody or control of any person entitled to indemnity under this extension.
 - ii. **Personal Injury** to any person entitled to indemnity under this extension.

4.9 Sudden and Accidental Pollution

We will indemnify **You** for **Compensation** which **You** are legally liable to pay for **Personal Injury** or **Property Damage** caused solely by a **Pollution Incident**. However, no coverage is provided under this extension for **Compensation, Defence Costs** or any other amount arising out of, resulting from, or attributable to **Pollution** happening anywhere in United States of America or Canada or any territory or protectorate within their jurisdictions.

EXCLUSIONS APPLICABLE TO THE PUBLIC AND PRODUCTS LIABILITY COVERAGE

We will not indemnify **You** in respect of any **Compensation, Claim, Defence Costs**, loss or expense arising out of, resulting from, or in any way attributable to:

4.10 Advertising Injury

Any **Advertising Injury**.

4.11 Assault and Battery

Assault or battery committed by **You** or at **Your** direction, unless it was committed for the purpose of preventing or eliminating danger to persons or property.

4.12 Care, Custody and Control

Property Damage to property which is owned or leased by, hired or held in trust by **You** or on loan to **You**, or which is otherwise in **Your** care, custody or control.

However, this exclusion does not apply to Automatic Extension of Cover 4.3 'Care, Custody and Control'.

4.13 Communicable Disease

- a. Any **Communicable Disease**, or the fear or threat (whether actual or perceived) of a **Communicable Disease** including, but not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **Communicable Disease**;
- b. Any disease, or the fear or threat of any disease, which:
 - i. is notifiable to the government or a local authority under any law, order, act or statute;
 - ii. is declared a Public Health Emergency of International Concern (PHEIC) by the World Health Organization.

4.14 Faulty Workmanship

The cost of re-performing, correcting or improving any work undertaken by **You** or on **Your** behalf.

4.15 Professional Liability

- a. **Professional Services**;
- b. Advice, design, plans, specifications, formulae, surveys or directions prepared or given by **You** for a fee or where a fee would ordinarily be charged.

4.16 Recall Costs

- a. Any loss, cost or expense incurred by **You** in relation to any withdrawal, recall, inspection, repair, replacement, removal or disposal of any **Product**;
- b. Liability caused by, arising out of, contributed to by, in respect of or in connection with any withdrawal, recall, inspection, repair, replacement, removal or disposal of any **Product**

4.17 The Product itself

- a. **Property Damage** to any **Product** caused by any defect or suspected defect therein;
- b. The unsuitability of any **Product** for its intended purpose;
- c. Any warranty or guarantee in respect of the performance of any **Product**.

5 Policy Exclusions

The following exclusions apply to both the Professional Liability and Public and Products Liability coverages.

We will not make any payment under this **Policy** in respect of **Compensation, Defence Costs** or any other amount arising out of, resulting from, or in any way attributable to:

5.1 Abuse

Any actual or alleged **Abuse**.

5.2 Aircraft Products

Any **Products** which are used in the construction, operation, maintenance, servicing or repair of any **Aircraft**.

5.3 Anticompetitive Practices

Any actual or alleged breach of any law or regulation with respect to any of the following activities: restrictive trade practices, anti-trust, price fixing, predatory pricing, restraint of trade, unfair competition or tortious interference in another's business or contractual relationships. This includes but is not limited to any such conduct in contravention of the Competition and Consumer Act 2010 (Cth), any Fair Trading Acts enacted by the States or Territories of Australia, Federal Trade Commission Act (USA), Sherman Anti-Trust Act (USA), Clayton Act (USA) or amendments thereto, or similar law or regulation, or such replacement, anywhere else in the world.

5.4 Asbestos

Asbestos, or any material containing asbestos.

5.5 Assumed Liability

Any breach of a written or oral contract, warranty, guarantee, promise or agreement, whether express or implied, or the liability of others assumed under any written or oral contract, warranty, guarantee, promise or agreement, whether express or implied. However, this exclusion does not apply:

- a. if **You** would have been liable in the absence of such contract, warranty, guarantee, promise or agreement; or
- b. to Automatic Extension of Coverage 3.5 'Contractual Liability'.

5.6 Cyber Liability

- a. A **Cyber Incident**;
- b. A **Cyber Act**;
- c. A **Denial of Service Attack**;
- d. A breach of **Data Protection Law** by **You**, or parties acting for **You**, involving access to, processing of, use of or operation of any **Computer System** or **Data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

However, sub-paragraph a. above does not apply to any otherwise covered **Claim** arising out of any actual or alleged negligent act, negligent error or negligent omission in the provision of **Professional Services** by **You** involving access to, processing of, use of or operation of any **Computer System** or **Data** unless such actual or alleged act, error or omission by **You** is caused by, contributed to by, resulting from, arising out of or in connection with a **Cyber Act**.

5.7 Deliberate Acts

Any deliberate, intentional, criminal or dishonest act or omission which **You** commit, condone or ignore. However, this exclusion does not apply to Automatic Extension 3.6 'Dishonesty of Employees'.

5.8 Employer's Liability

- a. **Personal Injury** to any **Employee** or person arising out of and in the course of employment by **You** where **You** are indemnified or would be entitled to be indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any workers' compensation law;
- b. **Personal Injury** to any **Employee** for mental anguish, harassment, libel, slander, defamation, humiliation or discrimination whilst in **Your** service or while employed by **You**;
- c. Liability imposed by the provisions of any workers' compensation law or accident compensation legislation or industrial award, agreement or determination.

5.9 Management Liability

Any actual or alleged breach of duty by any director or officer acting in their capacity as such.

5.10 Fines and Penalties

- a. Any fine or other penalty;
- b. Any exemplary, aggravated, multiple or punitive damages.

However, this exclusion does not apply to Automatic Extension of Coverage 3.3 'Compensatory Civil Penalties'.

5.11 Infrastructure Failure

- a. The failure of, impairment to or interruption in supply from any utility, including gas, water, electricity;
- b. The failure of, impairment to or interruption in service from any telecommunication provider or satellite;
- c. Electrical or mechanical failure, impairment or interruption, including electrical disturbance, spike, brownout or blackout.

5.12 Jurisdictional Limitation

- a. Any legal proceeding brought against **You** in the courts of the United States of America or any territory that operates under the jurisdiction of the United States of America
- b. Any judgment or order wherever obtained for the enforcement of any judgment of the courts of the United States of America or any territory that operates under the jurisdiction of the United States of America
- c. Any **Products**, which to your knowledge, are exported, either directly or indirectly to the United States of America, or any territory that operates under the jurisdiction of the United States of America;
- d. Any entity based in, operating in or domiciled in United States of America or any territory that operates under the jurisdiction of the United States of America.

5.13 Motor Vehicles

The ownership, possession, operation or use of any **Vehicle**:

- a. for which compulsory insurance or security is required under any legislation governing the use of the vehicle;
- b. where indemnity is provided by any other insurance effected by **You** or on **Your** behalf.

However, this exclusion does not apply to Section 4 'Public and Products Liability Coverage' in respect of **Personal Injury** or **Property Damage**:

- i. caused by the use of any tool, plant or equipment forming part of, or attached to and used in connection with the **Vehicle** at **Your** premises or any site at which **You** are working,
- ii. occurring during the loading or unloading of any **Vehicle** or the bringing to or taking away of a load from any **Vehicle** operated by **You** or on **Your** behalf.

5.14 Non-compliant Building Materials

Any good or product which:

- a. is not compliant with, or alleged not to be compliant with any **Building Standard**;
- b. does not conform with, or is alleged not to conform with any **Building Standard**;
- c. is installed, applied or used, or alleged to be installed, applied or used, in a manner that does not comply with any **Building Standard**.

5.15 Nuclear Risks

- a. Ionising radiation or contamination by radioactivity from any nuclear fuel or any waste from the combustion of nuclear fuel;
- b. The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear weapon, installation, reactor or other nuclear assembly or nuclear component thereof.

5.16 PFAS

- a. The actual, alleged, threatened, or suspected inhalation of, absorption of, ingestion of, contact with, exposure to, existence of, or presence of **PFC/PFAS**;
- b. Any request, demand, injunction, order, or statutory or regulatory requirement that **You** or others, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, destroy, dispose of, or in any way respond to or assess the effects of **PFC/PFAS**;

This exclusion applies whether the substances listed above acted alone, or were combined with any other substances or factors, or whether the substances were included as a component part of a product or otherwise.

5.17 Pollution

Any actual or alleged **Pollution**. However, this exclusion does not apply to Automatic Extension 4.7 'Sudden and Accidental Pollution'.

5.18 Property Owners, Occupiers and Transport Liability

The ownership, possession, maintenance or use by **You** or on **Your** behalf of any building, land, **Aircraft** or other aerial device, hovercraft or watercraft.

5.19 War and Terrorism

- a. War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, insurrection, rebellion, revolution, mutiny, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law, riots, strikes, civil commotion;
- b. Any **Act of Terrorism**.

This exclusion also excludes loss, damage, cost or expense of any nature whatsoever directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to an **Act of Terrorism**.

6 Claims Conditions

You must comply with the following conditions – failure to do so may result in a **Claim** not being covered or a reduction in the amount payable under this **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

6.1 Notification of Claims

- a. **You** must give written notice to **Us** at the address stated in the **Schedule** as soon as reasonably practicable of any **Claim, Occurrence** or **Investigation**. All notifications must include a specific description of the demand or assertion comprising the **Claim** or **Investigation**, including the date when and manner in which **You** first became aware of the matter.
- b. In respect of Section 3 'Professional Liability' notice must in any event be given before the expiry of the **Policy Period**.
- c. A **Claim, Occurrence** or **Investigation** will only be considered as reported to **Us** when written notice is first received.
- d. **You** must forward to **Us** every legal document or other communication received (including letters, demands, writs, summons and legal processes) relating to such **Claim** or **Investigation** as soon as reasonably possible after receipt.

6.2 Assistance and Cooperation

Following receipt of a **Claim**, notice of **Investigation** or an **Occurrence**:

- a. **You** must not admit liability for what has happened or make any offer, deal or payment without **Our** prior written consent.
- b. **You** must take all reasonable measures as are appropriate to avoid or minimise any **Claim**, loss or payment under this **Policy**.
- c. **You** must retain all evidence and supporting documents and not dispose of or destroy any property or information relating to the circumstances that gave rise to the **Claim** or loss.
- d. **You** must co-operate fully with **Us** or anyone acting on **Our** behalf in the investigation, adjustment and settlement of the **Claim** or loss.

6.3 Defence and Settlement

- a. **We** are entitled, but not obliged, to take over and conduct in the **Your** name, the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any such **Claim**.
- b. **We** may at any time in connection with any **Claim** or loss, pay to **You** the **Limit of Liability** (or any applicable sub-limit) after deduction of any sums already paid. **We** will then have no further liability for that **Claim** or loss nor for any **Defence Costs** associated therewith.
- c. The selection of legal representation to defend a **Claim** shall be made by mutual consent between the **Named Insured** and **Us**, but in the absence of agreement, **Our** decision will be final.
- d. **We** will seek **Your** consent for any settlement that is acceptable to **Us** and to the claimant, but if such consent is withheld and **You** elect to contest the **Claim**, then the maximum amount **We** will pay in respect of such **Claim** will be the lesser of:
 - i. the amount for which the **Claim** could have been settled, plus the **Defence Costs** incurred up to the first date on which **Your** consent to settle was withheld, less the **Excess**; or
 - ii. the remaining portion of the applicable **Limit of Liability** (or other applicable sub-limit of liability).

7 General Conditions

7.1 Alteration To Risk

- a. **You** must give **Us** written notice as soon reasonably possible of any change in the details shown in the **Schedule**, the **Business, Professional Services** or the subject matter of this insurance.
- b. **We** will not provide cover for any changes unless such changes have been accepted by **Us** and confirmed by an alteration to this **Policy**, an endorsement or other form of written confirmation. Notice to any agent or knowledge possessed by any agent, or by any other person, will not effect a waiver or a change in any part of this **Policy** or stop **Us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by an endorsement signed by **Us**.
- c. Furthermore, **You** must give **Us** immediate notice of:
 - i. any person or entity within the definition of **You** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration;
 - ii. **Your** failure to pay debts or breach of any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

Where such notice is given and/or where there is any material alteration to the risk, **We** will be entitled to cancel this **Policy** in accordance with General Condition 7.4 'Cancellation'.

7.2 Allocation

- a. In the event that **You** are party to a **Claim** which is covered only in part by this **Policy**, **We** and **You** will use best endeavours to agree upon a reasonable allocation of **Compensation, Defence Costs, Investigation Costs** or any other amount covered by this **Policy** on the basis of the relative legal and financial exposures attributable to indemnified matters and matters not indemnified under this **Policy**.
- b. In the event that agreement cannot be reached, Senior Counsel (agreed upon by the **Named Insured** and **Us** or, failing such agreement, to be nominated by the Chairman of the New South Wales Bar Association or where appropriate by a similar official of any similar body in any other State or Territory) will determine, as an expert but not an arbitrator, a fair and reasonable allocation of **Compensation, Defence Costs, Investigation Costs** or any other amount covered by this **Policy** on the basis of the relative legal and financial exposures attributable to indemnified matters and matters not indemnified under this **Policy**.
- c. Until such a determination has been made, **We** may, at **Our** absolute discretion and without any admission in relation to coverage, indemnify **You** under this **Policy** as **We** consider reasonable.
- d. The cost of Senior Counsel's advice shall be regarded as part of the **Defence Costs**.

7.3 Assignment

The interest hereunder is not assignable by You without Our prior written consent.

7.4 Cancellation

- a. **We** may cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth). If the **Policy** is cancelled, the **Named Insured** shall be entitled to a rebate equal to the proportionate part of the premium corresponding to the unexpired portion of the Policy Period, provided always that no **Claim** has been made against **You** and no act, error, omission, fact, information or circumstance or **Occurrence** which could reasonably be foreseen to give rise to a Claim or other payment under this **Policy** has been notified prior to such cancellation. Otherwise, the premium shall not be returnable and shall be deemed fully earned at cancellation.
- b. This **Policy** may be cancelled by the **Named Insured** at any time by giving written notice to **Us**. In such case, if no **Claim** has been made prior to such cancellation, **We** will be entitled to retain the premium for the period during which the Policy has been in-force, and You shall be entitled to a refund of the unexpired premium. Otherwise, in the event that the **You** notify **Us** of a **Claim** or **Occurrence** triggering coverage under the Policy then the premium shall be deemed fully earned at cancellation and there will be no return of premium by **Us** to **You**. In the event that a Claim is made after cancellation of the **Policy** then **We** shall retain the right to offset the unexpired premium amount against the agreed claim amount.

7.5 Change Of Control

If, during the **Policy Period**, the **Named Insured** is subject to a **Change Of Control** then this Policy will terminate effective from the date of the **Change Of Control**. However, Section 3 'Professional Liability Coverage' shall remain in full force and effect until its natural expiration date, but only with respect to any act, error, omission first committed or occurring on or after the **Retroactive Date** and prior to the effective date of the **Change Of Control**. The **Named Insured** must provide **Us** with written notice of the **Change Of Control** as soon as practicable, but in any event, no later than 30 days from the effective date of the **Change Of Control**. If the **Named Insured** fails to provide such written notice within such time period then this **Policy** will terminate effective from the date of the **Change Of Control**.

7.6 Complaints

We strive to provide an excellent service to all **Our** customers but occasionally things can go wrong. **We** take all complaints seriously and endeavour to resolve all customers' problems promptly. Any questions or concerns about this **Policy** or the handling of a **Claim** should, in the first instance, be addressed to the intermediary that arranged it for **You**.

In the event that **You** remain dissatisfied and wish to make a complaint, please refer to 'Dispute Resolution' within the 'Important Notices' section of this **Policy**.

7.7 Currency

All premium, limit, sublimit and other amounts under this **Policy** are payable in Australian Dollars unless otherwise specified in the **Schedule**.

7.8 Entire Agreement

By acceptance of this **Policy**, **You** agree that this **Policy** embodies all agreements existing between **Us** and **You** relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on **Our** behalf shall not effect a waiver or a change in any part of this **Policy** or stop **Us** from asserting any right under the terms of this **Policy**, nor shall the terms be waived or changed except by written endorsement or rider issued by **Us** to form a part of this **Policy**.

7.9 Governing Law

The meaning, validity and effect of this **Policy** will be interpreted in accordance with the law of the Commonwealth of Australia and the State or Territory in which it is issued, and the Courts of the Commonwealth of Australia will have exclusive jurisdiction in any dispute hereunder.

7.10 Limit of Liability

- a. The **Limit of Liability** for Professional Liability is the maximum amount **We** will pay under Section 3 'Professional Liability Coverage'.
- b. The **Limit of Liability** for Public Liability is the maximum amount **We** will pay under Section 4 'Public and Products Liability Coverage' in respect of any one **Occurrence**.
- c. The **Limit of Liability** for Products Liability is the maximum amount **We** will pay under Section 4 'Public and Products Liability Coverage' in total for all **Occurrences** in connection with **Your Products**.
- d. **Defence Costs** are payable in addition to the **Limit of Liability**. However, if the total amount of **Compensation** required to dispose of a **Claim** exceeds the **Limit of Liability**, then **We** will pay only the proportion of any **Defence Costs** that the amount of indemnity available under this **Policy** bears to that total **Compensation**.

7.11 Excess

- a. **We** will only indemnify **You** for that portion of any **Claim**, **Defence Costs** or other amount payable under this **Policy** which is above the **Excess**.
- b. The **Excess** will be the first amount borne by **You** and, except with respect to the **Other Insurance**, will remain uninsured.
- c. **We** have the right, but not the obligation, at **Our** option to pay any part or all of the **Excess** to effect settlement of a **Claim**. In such circumstances, **You** must promptly reimburse **Us** for such part of the **Excess** amount which has been paid.

7.12 Notice and Authority

The **Named Insured** is considered the agent for all insured parties and will act on their behalf for the purpose of receiving or providing notices under this **Policy**, the acceptance of any endorsement to this **Policy**, the payment of premiums or **Excess** amounts and receipt of any return premiums that may be due. By acceptance of this **Policy** the **You** agree that the **Named Insured** is instructed to act as their agent as stated in this clause.

7.13 Other Insurance

The insurance under this **Policy** will apply in excess of any other valid and collectible insurance available to the **Insured**, including:

- a. any **Other Insurance**;
- b. any self-insured retention, excess or deductible portion thereof,

unless such other insurance is written only as specific excess insurance over the **Limit of Liability** or any other applicable sub-limit of this **Policy**.

7.14 Proof of Loss

For all requests made under Automatic Extension 3.10 'Loss of Documents', for reasonable and necessary costs incurred for the repair, replacement and/or reconstitution of any **Documents**, **You** shall bear the burden of providing satisfactory proof to substantiate a loss (including any costs incurred in such process) and **We** shall not be under any obligation to provide indemnity to **You** until such time as **We** are satisfied that such loss has, in fact, been sustained.

7.15 Related Claims

All **Claims** that arise out of, are connected with, consequent upon or attributable to the same act, error, omission, fact, incident or circumstance, or a series of related, repeated or continuing acts, errors, omissions, facts, incidents or circumstances will be considered a single **Claim**, irrespective of the number of claimants or the number of **Insureds** involved. All such **Claims** are deemed to have been made at the date on which the first **Claim** was made.

7.16 Sanctions

The provision of any cover, the payment of any **Claim** and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit by **Us** would expose **Us** to any sanction, prohibition or restriction under any:

- a. United Nations' resolution;
- b. the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Commonwealth of Australia.

Such suspension shall continue until such time as **We** would no longer be exposed to any such sanction, prohibition or restriction.

7.17 Severability and Non-Imputation

Where **Named Insured** comprises more than one party:

- a. any failure by any insured party to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth); or
- b. any misrepresentation by an insured party to **Us**

shall not prejudice the right of the any other insured party under this **Policy**, provided that such other party:

- i. is entirely innocent of, had no prior knowledge of and did not consent to or condone such failure or misrepresentation; and
- ii. notifies **Us** in writing as soon as reasonably possible after becoming aware of such failure or misrepresentation; and
- iii. takes all reasonable and necessary action to remedy such failure or misrepresentation and co-operates with **Us** to mitigate any prejudice suffered by **Us** by reason of such failure or misrepresentation.

7.18 Subrogation

If payment is made or liability admitted under this **Policy**, **We** will be subrogated to all rights of recovery available to **You** against any third party in connection with that payment or such liability. **You** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** will do nothing after the act, error or omission or **Occurrence** that gave rise to a **Claim** to prejudice such rights. Any recoveries will be applied first to subrogation expenses, second to **Defence Costs** and any other amounts paid **Us**, and lastly to the **Excess**. Any additional amounts recovered will be paid to the **Named Insured**.

7.19 Territorial limits

This insurance applies to **Claims** that are made anywhere in the world unless otherwise stated in the **Schedule**.