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UNDERWRITING



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MANAGEMENT LIABILITY INSURANCE

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IMPORTANT INFORMATION

INTRODUCTION

Welcome and thank you for choosing **Us** as your insurance provider.

We work in partnership with **Your** insurance broker who will be happy to answer any questions **You** may have concerning the **Policy**.

This document contains the details of **Your Policy**. This **Policy** consists of individual Sections and **You** should read it together with **Your Schedule**, which contains information about the **Policy** as it applies to **You** and **Your** business.

Because **We** don't know **Your** personal circumstances, **You** should treat any advice in this **Policy** as purely general in nature. It doesn't consider **Your** objectives, financial situation or needs. **You** should carefully consider the information provided with regard to **Your** personal circumstances to decide if it is right for **You**.

Keep this information in a safe place - it contains important information about **Your Policy** should **You** want to make a claim or make changes to **Your** insurance cover. This **Policy** is only valid when a completed **Schedule** is attached to it.

About Hutch

Hutch Underwriting Pty Ltd ABN 84 655 256 134, authorised representative number 001 296 345 is an authorised representative of CoverRadar Group Pty Ltd ABN 14 641 225 809, AFS Licence number 523647 of L6, 7-15 Macquarie Place, Sydney, NSW 2000.

Hutch Underwriting issues and manages **Your** insurance policy and acts on behalf of certain underwriters at Lloyd's, led by Munich Re Syndicate MRS/457.

This means that when issuing this **Policy**, **Hutch Underwriting** will be acting on behalf of the **Insurers**, not for **You**.

Postal Address: L6, 7-15 Macquarie Place
Sydney, NSW 2000
Tel: 1300 256 056

Email: help@hutchunderwriting.com.au

Your insurance broker will arrange this insurance for **You** on **Your** behalf. If **You** have any questions or need any further information concerning **Your** insurance, **You** should contact **Your** insurance broker to assist **You** with **Your** inquiry. **You** should direct all of **Your** correspondence to **Hutch Underwriting** through **Your** insurance broker.

About the Insurer

This **Policy** is insured by certain underwriters at Lloyd's, led by Munich Re Syndicate MRS/457. The definitive numbers and the proportions underwritten by the Lloyd's underwriters, can be supplied on application. In consideration of the premium specified in the **Schedule**, the underwriters are bound, severally and not jointly, each for their own part and not one for another, their executors and administrators, to insure

in accordance with the terms and conditions contained in the **Policy** or any endorsement.

About Lloyd's

Lloyd's is the world's leading insurance and reinsurance marketplace. Through the collective intelligence and risk-sharing expertise of the market's underwriters and brokers, Lloyd's helps to create a braver world.

The Lloyd's market provides the leadership and insight to anticipate and understand risk, and the knowledge to develop relevant, new and innovative forms of insurance for customers globally.

It offers the efficiencies of shared resources and services in a marketplace that covers and shares risks from more than 200 territories, in any industry, at any scale.

And it promises a trusted, enduring partnership built on the confidence that Lloyd's protects what matters most: helping people, businesses and communities to recover in times of need.

Lloyd's began with a few courageous entrepreneurs in a coffeeshop. Three centuries later, the Lloyd's market continues that proud tradition, sharing risk in order to protect, build resilience and inspire courage everywhere.

Visit www.lloyds.com for more information.

About This Policy - Notice to the Insured

This **Policy** is a legal contract. Please read it carefully to ensure that it is in accordance with **Your** requirements and that **You** understand its terms and conditions. **Your** insurance broker who arranged this **Policy** should be contacted as soon as reasonably practicable if any correction is necessary.

When drawing up this insurance, **We** have relied on the information and statements that **You** have provided in the proposal form declaration or statement of fact. Please read this **Policy** carefully to ensure that it meets **Your** requirements.

"Claims Made and Notified" General Information

The information under this heading is provided for general information purposes only and does not form part of the contract of insurance or impose any contractual obligations on any **Insured** or create contractual rights between us.

Certain insuring clauses in this **Policy** operate on a "claims made and notified" basis, which means that they:

- cover claims made against the relevant insured and notified to the insurers in writing during the **Policy Period**; and
- do not provide cover in relation to:
 - claims made against an insured after the expiry of the **Policy Period**, even though the event giving rise to the claim may have occurred during the **Policy Period** (unless specified otherwise);
 - claims made against an insured notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;

- claims made, threatened or intimidated against an Insured prior to the commencement of the **Policy Period**;
- facts or circumstances of which an insured first became aware prior to the **Policy Period**, and which they knew, or ought reasonably to have known, had the potential to give rise to a claim under the **Policy**;
- claims arising out of circumstances noted on the proposal for the current **Policy Period** or on any previous proposal form;
- claims arising from civil, administrative, criminal or regulatory proceeding, investigation, arbitration or adjudication that existed prior to, or was pending before, the commencement of the **Policy Period**.

If the insured gives notice in writing to the insurers of any facts that might give rise to a claim against them as soon as reasonably practicable after they become aware of those facts, but before the expiry of the **Policy Period**, they may have rights under Section 40(3) of the *Insurance Contracts Act 1984* (Cth) ("the Act") to be indemnified in respect of any claim subsequently made against them arising from those facts, notwithstanding that the claim is made after the expiry of the **Policy Period**.

Such rights arise under the Act only. The terms of the **Policy** and the effect of the **Policy** is that the **Insured** is not covered for claims made against them after the expiry of the **Policy Period**, unless specified otherwise.

Language

The language of this contract of insurance will be English.

Duty of Disclosure

Before **You** enter into an insurance contract, **You** have a duty to tell **Us** anything that **You** know, or could reasonably be expected to know, may affect **Our** decision to insure **You** and on what terms. **You** have this duty until **We** agree to insure **You**. **You** have the same duty before **You** renew, extend, vary or reinstate an insurance contract.

You do not need to tell **Us** anything that:

- reduces the risk **We** insure **You** for; or
- is common knowledge; or
- **We** know or should know as an insurer; or
- **We** waive **Your** duty to tell **Us** about.

If **You** do not tell **Us** something **You** are required to, **We** may cancel **Your** contract or reduce the amount **We** will pay **You** if **You** make a claim to the extent of any prejudice suffered by **Us** arising from **Your** failure to comply with this condition, or both, subject always to the *Insurance Contracts Act 1984* (Cth)

If **Your** failure to tell **Us** is fraudulent, **We** may refuse to pay a claim and treat the contract as if it never existed, subject always to the *Insurance Contracts Act 1984* (Cth)

Renewal Procedure

Before the **Policy** expires, **We** will advise **You** via **Your** broker, whether **We** intend to offer renewal and if so on what terms. This advice also applies for any offer of renewal **We** may make, unless **We** tell **You** otherwise.

It is important that **You** check the terms of any renewal offer before renewing to ensure that the details are correct. In particular, check all limits (including aggregates and sub limit(s)) and applicable Retentions to ensure the levels of cover are appropriate.

Please note that **You** need to comply with the duty of disclosure before each renewal.

Retroactive liability

The **Policy** does not provide cover in relation to events that occur before the **Retroactive Date** as stated in the **Schedule**.

Liability assumed under agreement

Cover provided by this form of liability insurance does not cover liability which **You** have agreed to accept, unless **You** would have been so liable in the absence of such agreement.

Utmost good faith

The **Policy** is based on the utmost good faith requiring **Us** and **You** (including third party beneficiaries after the **Policy** is entered into) to act towards each other with the utmost good faith in respect of any matter relating to the **Policy**. A failure to comply is a breach of the *Insurance Contracts Act 1984* (Cth).

Sanction Limitation Clause

Please note General Condition 9. Sanction Limitation Clause, which prevents **Us** from providing cover, benefits or paying claims where that would expose **Us** to any sanctions, prohibitions or restrictions.

The General Insurance Code of Practice

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

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

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

Cooling Off Period

If **You** change **Your** mind within 20 days of the commencement of **Your Policy**, **You** can cancel it and receive a full refund (less any taxes or duties payable that **We** are unable to have refunded). **You** cannot return the **Policy** where, before the 20 day period ends, **You** have made or are entitled to make a claim. After the cooling off period ends **You** continue to have cancellation rights under the **Policy**. These rights are set out in the General Conditions of this document.

To cancel **Your Policy** within the cooling-off period, contact **Your** broker.

Privacy

We will collect personal information when **You** deal with us, **Our** agents, other companies in **Our** group, certain underwriters at Lloyd's, or suppliers acting on **Our** behalf.

We use **Your** personal information so **We** can do business with **You**, which includes issuing and administering **Our** products and services and processing claims. We may disclose your personal information to third parties, including insurers, reinsurers, other insurance intermediaries, claims and other service providers and related entities.

Sometimes **We** might send **Your** personal information overseas. The locations **We** send it to can vary but include Singapore, the Philippines, India, Ireland, the UK, the US, China and countries within the European Union.

Our privacy policy describes in detail where and from whom **We** collect personal information, as well as where **We** store it and the full list of ways **We** could use it. To get a free copy of it please visit hutchunderwriting.com.au/privacy.

It's up to **You** to decide whether to give us **Your** personal information, but without it **We** might not be able to do business with **You**, including not paying **Your** claim.

Simply contact the Hutch's Privacy Officer on the details below if You would like to:

- Access the personal information Hutch holds about You;
- Update or correct the information Hutch holds about You;
- Discuss Your privacy concerns; or
- Be removed from the mailing list to receive information about Hutch products and services

The Privacy Officer

Hutch Underwriting

L6, 7-15 Macquarie Place, Sydney, NSW, 2000

Telephone: 1300 256 056

Email: help@hutchunderwriting.com.au

Complaints & Dispute Resolution

If **You** have any concerns or wish to make a complaint in relation to this **Policy**, **Our** services or **Your** insurance claim, please let **Us** know and **We** will attempt to resolve **Your** concerns in accordance with our internal dispute resolution procedure.

Please contact Hutch Underwriting Pty Ltd in the first instance:

Complaints Officer
Hutch Underwriting Pty Ltd
Tel: 1 300 256 056
E: complaints@hutchunderwriting.com.au

We will acknowledge receipt of **Your** complaint and do **Our** utmost to resolve the complaint to **Your** satisfaction within 10 business days.

If **We** cannot resolve your complaint to your satisfaction, **We** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team.

Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783

Post: PO Box R1745
Royal Exchange NSW 1225

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

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

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

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

Service of Suit

The Underwriters accepting this **Policy** agree that:

1. if a dispute arises under this **Policy**, this **Policy** will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
2. any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Post: PO Box R1745
Royal Exchange NSW 1225
Email: serviceofsuitaus@lloyds.com
who has authority to accept service on the Underwriters' behalf;

if a suit is instituted against any of the Underwriters, all Underwriters participating in this **Policy** will abide by the final decision of such Court or any competent Appellate Court. In the event of a claim arising under this **Policy** notice should be given as soon as practicable to:

The Claims Manager
Telephone Number: 1300 900 216
Email: claims@hutchunderwriting.com.au

Confirmation of Transactions

If **You** need to clarify any of the information contained in this **Policy**, wish to confirm a transaction or **You** have any other queries regarding **Your Policy**, **Your** first point of contact is **Your** insurance broker. However, if **You** would also like to contact **Hutch Underwriting** directly, please use the contact details above.

HOW CLAIMS ARE DEALT WITH

We reserve the right to appoint a loss adjuster.

If required by **Us** or the Insurer **You** will complete a claim form, report, statement or declaration.

To report a claim, please contact:

The Claims Manager
Telephone Number: [1300 256 056](tel:1300256056) Extn 2
Email: claims@hutchunderwriting.com.au

Please quote the policy number (as shown on the **Schedule**) on all correspondence.

Our claims service is available Monday-Friday from 08:30 AM to 5:00 PM AEST.

Reporting a claim to **Us** shall be deemed notice to the **Insurers**.

We recommend that **You** also advise **Your** insurance broker of any incident.

POLICY WORDING

POLICY OPERATION

Our Agreement

Your Policy is an agreement between **You** and **Us**, made up of:

1. this **Policy** wording;
2. **Your Schedule**, which sets out the cover **You** have chosen and any terms specific to **You**; and
3. any Endorsement or notice **We** give **You** in writing.

Uniform Meaning

This **Policy** and the **Schedule** shall be read together as one contract and any word or expression to which a specific meaning has been given in any part of this **Policy** or of the **Schedule** shall bear such meaning wherever it may appear unless such meaning is clearly inapplicable in the context that the word or expression appears.

Insuring Clause

We will insure **You** during the **Policy Period** in the manner and to the extent specified in the **Policy**. This cover will be subject to:

1. conditions and exclusions which apply to specific covers or sections;
2. general exclusions, which apply to any claim **You** make under this **Policy**;
3. general conditions, which set out **Your** responsibilities under this **Policy**;
4. claims conditions, which set out our rights and **Your** responsibilities when **You** make a claim; and
5. other terms, which set out how this **Policy** operates.

Provided that **We** shall not be liable under this **Policy** for more than the **Limit of Liability** or sub-limit applying to the applicable cover or section, less any **Retention**. **Our** liability shall be limited to **Our** proportion noted in the **Schedule**.

Premium Payment

You must pay the premium in full to **Us** within 60 days of the inception of the **Policy**. If the premium has not been paid to **Us** by this date, this **Policy** will be cancelled in accordance with the provisions of the *Insurance Contracts Act 1984 (Cth)*.

Goods and Services Tax (GST)

This **Policy** covers **You** for GST liability on settlement of claims, arising under Section 68-30 of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Any payment **We** make to **You** in this respect is in addition to the **Limit of Liability**.

We will pay these claims after **You** have provided **Us** with the appropriate approved notification to the Commissioner of taxation as required under Section 23 of the *A New Tax System (Goods and Services Tax Transition) Act 1999 (Cth)*.

Where the GST inclusive claim settlement amount exceeds the applicable **Limit of Liability** or sub-limit, **We** will pay **You** an amount up to 10% above the maximum amount payable under the **Policy**, to take account of **Your** GST liability on the claim settlement,

subject to any payment made in respect of **Your** Section 68-30 liability.

Third Party Rights

It is not the intention of this **Policy** that any party except **Us** and those named or defined as "**Insureds**" herein or other parties specifically indemnified by this **Policy** should acquire any rights under or in relation to it nor be entitled to the benefit of any of its terms.

GENERAL EXCLUSIONS

The following Exclusions apply to all Sections of this **Policy**. There are other Exclusions which apply only to the Section in which they are stated.

We will not cover **You** or any **Insured Person** under this **Policy** for **Loss** or **Direct Financial Loss** arising from any **Claim, Defence Costs, Investigation Expenses** or any other loss or liability under this **Policy** directly or indirectly arising out of, connected to, based upon or attributable to:

1. Aircraft, Watercraft or Vehicle

the ownership, operation or use of any **Aircraft, Watercraft** or **Vehicle** of any kind.

2. Asbestos

asbestos in whatever form or quantity.

3. Assumed Liability

any obligation assumed by **You** under any contract, agreement, warranty or guarantee assumed or provided by **You** except to the extent that **You** would have been legally liable in the absence of such contract, agreement, warranty or guarantee.

4. Biological or Chemical Materials

the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

5. Bodily Injury and Property Damage

any bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof.

This exclusion will not apply to employment-related wrongful infliction of mental anguish or emotional distress to the extent covered as an **Employment Practices Wrongful Act**.

6. Breach of Professional Duty

Any:

- (a) actual or alleged act, error, omission, neglect or breach of duty in respect of any services or advice of a professional nature by an **Insured** and/or **Insured Person**;
- (b) actual or alleged breach of any contract in respect of any services or advice of a professional nature provided by an **Insured** and/or **Insured Person**; or
- (c) actual or alleged failure to render any services or advice of a professional nature by an **Insured** and/or **Insured Person**.

7. Claims by Associates

any **Claim** involving any entity, facility or arrangement of any description which, at the date the **Claim** is made against any **Insured** or **Insured Person** or at the time the events giving rise to the **Claim** occurred:

- (i) was managed or under the **Control**, wholly or in part, by any **Insured** or any nominee(s) of any **Insured**, or any **Family Member**; or
- (ii) an **Insured** or a **Family Member** had a direct or indirect beneficial interest or **Financial Interest** in.

8. Communicable Disease

a **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**.

9. Contractual Liability

any contractual liability, warranty or guarantee which **You** have assumed or provided, except if **You** would have been liable in the absence of the contractual liability, warranty or guarantee.

This Exclusion does not apply where cover is provided under Extension 1. Contract Claims Defence Costs in **Section 2 – Corporate Liability**

10. Crypto-Currency

any **Crypto-Currency** or blockchain ledger, including but not limited to:

- (a) the buying, selling, exchange, or transfer of **Crypto-Currency**;
- (b) the storage, custody, or safekeeping of **Crypto-Currency** or any related digital assets;
- (c) any management, advisory, or investment activities related to **Crypto-Currency**.

11. Cyber Loss

any **Cyber Loss** except to the extent covered under Section 6. Cyber.

This exclusion shall not apply to **Section 1 – Directors & Officers Liability**.

12. Dishonesty, Fraud or Wilful Misconduct

1. any dishonest, fraudulent, criminal or malicious act or omission by **You**, any **Insured Person** or by any of **Your** contractors, sub-contractors, or agents whilst acting on **Your** behalf; or
2. any intentional violation or breach of any statute, regulation, contract or duty, or any actual or alleged act or omission committed or omitted with reckless disregard for the consequences by **You** or any of **Your** contractors, sub-contractors or agents; or
3. any **Insured** having gained in fact any personal advantage to which he/she was not legally entitled;

except to the extent covered under Section 5 -Crime.

13. Excluded Industry

Any operation by any **Insured** or **Insured Person(s)** in an **Excluded Industry**.

For the purposes of this Excluded Industry exclusion:

Excluded Industry means:

- (i) childcare services, including but not limited to childcare centres, early learning centres, and nanny services;
- (ii) aged care services, including but not limited to residential aged care facilities, nursing homes, retirement villages providing care services, and home care providers;
- (iii) mineral or energy extraction, including but not limited to mining and extractive drilling;
- (iv) public utilities, including but not limited to the provision of electricity, water, or sewerage services;
- (v) Government bodies, including but not limited to Federal, State and Local public administration;
- (vi) religious organizations, including but not limited to churches, mosques, synagogues, temples, chapels, parishes, or organisation primarily established for, or engaged in religious worship or the promotion of religious beliefs; or
- (vii) any activity that requires holding of an Australian Financial Services License, Australian Credit License or any similar certification issued by a governmental, professional or other authorised institution.

14. Fines and Penalties

except to the extent covered under **Section 4 - Statutory Liability** or **Section 1 Directors & Officers Liability - Optional Extension 2. Insured Person Cyber Fines and Penalties** any punitive, aggravated, multiple or exemplary damages, fines or penalties imposed by law or any **Investigation** as defined in the relevant coverage section or **Defence Costs** arising as a consequence thereof.

15. Franchise Liability

any franchise agreement (including the absence of a franchise agreement), or any franchise business or operation.

16. Known Claims or Circumstances

any **Claim** made prior to the commencement of the **Policy Period**, or in respect of any **Claim**, loss, or circumstances:

1. notified under any previous insurance policy;
2. known by **You** at the commencement of the **Policy Period** and which **You** considered or which a reasonable person in **Your** position would have considered, may give rise to a **Claim** and/or loss; or
3. stated in the proposal or declaration in relation to this **Policy** or any earlier insurance policy.

17. Nuclear

1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear, installation, reactor or other nuclear assembly or nuclear component thereof;
3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. Part (d) of this exclusion does apply to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; and
5. any chemical, biological, bio-chemical or electromagnetic weapon.

18. Pathogenic Organisms Exclusion

any **Claim** for any legal liability of whatsoever nature directly or indirectly cause by or contributed to by or arising from any **Pathogenic Organism**.

For the purposes of this exclusion **Pathogenic Organism** shall include but not limited to the following: -

Mould or fungi or its spores, bacteria, yeasts, mildew, algae, mycotoxins or any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise.

It is understood and agreed that Insurers shall not be under any duty to defend the insured in any proceedings in connection with any **Pathogenic Organism** claims or incidents.

This exclusion shall apply irrespective of when the claim arose or was made and irrespective of when the exposure to any **Pathogenic Organism** occurred.

19. Product Liability

any **Product Liability**.

20. Retroactive Date

any **Claim** related to any **Wrongful Act, Employment Practices Wrongful Act, Direct Financial Loss, Third Party Crime or Theft** which occurred before the **Retroactive Date** as stated on the **Schedule**

21. Securities

any public or private offering of **Securities** including the public or private solicitation, sale, distribution or issuance of such **Securities**, whether or not a **Disclosure Document** has been issued, unless the **Insurer** grants its prior written consent, which will not be unreasonably withheld or delayed, to extend cover for such disclosure document.

22. Territorial and Jurisdictional Limits

1. any act, error or omission committed by **You** within the United States of America, Canada, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine or Belarus, and their respective territories and protectorates; or

2. any action brought in a court of law to enforce any judgement in accordance with or pursuant to the laws of the United States of America or Canada including any other territory that comes within the jurisdiction of the courts of either nation, or to which the laws of either nation apply; or
3. any action brought in a court of law to enforce any judgement in accordance with or pursuant to the laws of Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine or Belarus, including any other territory that comes within the jurisdiction of the courts of any such nation, or to which the laws of any such nation apply.

23. War and Terrorism

any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
2. any **Act of Terrorism**; or
3. damage, loss, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above is also excluded.

24. War and Cyber Operation Exclusion

Notwithstanding any provision to the contrary in this **Policy**, this **Policy** does not cover that part of any loss, damage, liability, cost, or expense, of any kind (together "loss"):

1. directly or indirectly arising from a **War**, and/or
2. arising from a **Cyber Operation** that is carried out as part of a **War** or the immediate preparation for a **War**, and/or
3. arising from a **Cyber Operation** that causes a **State** to become an **Impacted State**. This paragraph 3 shall not apply to the direct or indirect effect of a **Cyber Operation** on a **Computer System** used by the **Insured** or its third-party service providers that is not physically located in an **Impacted State** but is affected by a **Cyber Operation**.

Attribution of a Cyber Operation to a State

Notwithstanding the **Insurer's** burden of proof, which shall remain unchanged by this clause, in determining attribution of a **Cyber Operation** to a **State**, the **Insured** and **Insurer** will consider such objectively reasonable evidence that is available to them. Further to any legally permissible evidence, this may include formal or official attribution by the government of the **State** in which the **Computer System** affected by the **Cyber Operation** is physically located to another State or those acting at its direction or under its control.

For the purposes of this War and Cyber Operation exclusion:

Computer System means

any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud infrastructure 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. If there is any inconsistency between definitions of computer system in this exclusion and the Policy, the definition in the Policy shall apply.

Cyber Operation means

the use of a **Computer System** by, at the direction of, or under the control of a **State** to

1. disrupt, deny access to or, degrade functionality of a **Computer System**, and/or
2. copy, remove, manipulate or destroy information in a **Computer System**.

Essential Service means

a service that is essential for the maintenance of vital functions of a State including, but not limited to, financial institutions and associated financial market infrastructure, health services or utility services.

Impacted State means

any **State** where a **Cyber Operation** has had a major detrimental impact on:

1. the functioning of that **State** due to disruption to the availability, integrity or delivery of an **Essential Service** in that State, and/or
2. the security or defence of that **State**.

State means

a sovereign state.

War means

armed conflict involving physical force:

1. by a **State** against another **State**, or
2. as part of a civil war, rebellion, revolution, insurrection, military or usurped power, whether War be declared or not.

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GENERAL CONDITIONS

The following General Conditions apply to all Sections of this **Policy**, unless specified otherwise.

1. Aggregate Limit of Liability

If **You** have elected to apply an aggregate limit to the **Policy** it will be shown on the **Schedule** as the **Aggregate Limit of Liability**.

The **Aggregate Limit of Liability** is the maximum available indemnity under the **Policy**. **Payments** under any coverage section shall erode this limit, and once the **Aggregate Limit of Liability** has been exhausted, **We** shall have no further liability to make any payments for **Claims** under this **Policy**.

If the **Aggregate Limit of Liability** is exhausted, **We** shall have no obligation to continue defending any **Claims**, and all coverage under this policy will cease, subject to any applicable provisions of the policy.

The **Aggregate Limit of Liability** does not increase any of the individual **Limit of Liability** of any **Section**.

2. Alteration to Risk

- (a) **You** must give **Us** written notice as soon as reasonably practicable of any material change in facts or circumstances existing at the commencement of the **Policy Period**.

A material change to the risk includes, without limitation, the performance of any services or activities that are materially different from those declared in the proposal form or that are outside the normal activities of the **Business**.

- (b) Neither this **Policy**, nor any right under it may be assigned without **Our** prior written consent, which will not be unreasonably withheld or delayed.

3. Cancellation

The **Named Insured** may cancel this **Policy** at any time by giving **Us** written notice, and:

- (a) if no **Claim** (or other notification pursuant to s 40 (3) *Insurance Contracts Act 1984*), has been notified to **Us** under this **Policy** prior to the effective date of cancellation, **We** will make a pro-rata refund of **Premium** (less any taxes or duties payable that **We** are unable to have refunded) for the unexpired portion of the **Policy Period**; or

- (b) If a **Claim**, (or other notification pursuant to s 40 (3) *Insurance Contracts Act 1984*), has been notified to **Us** under this **Policy** prior to the effective date of cancellation, there will be no refund of **Premium** for the unexpired portion of the **Policy Period**.

We may cancel this **Policy** in accordance with the provisions of the *Insurance Contracts Act 1984 (Cth)*, in which event **We** will make a pro-rata refund of any paid **Premium** for the unexpired portion of the **Policy Period**.

4. Change of Control

The **Named Insured** must, as soon as reasonably practicable, give **Us** notice in writing of any **Change of Control** which occurs.

In the event of a **Change of Control**, **We** will only cover any **Claim(s)** made against an **Insured** or **Insured Person** arising out of **Wrongful Acts** occurring prior to the **Change of Control**.

5. Confidentiality

An **Insured** and/or any **Insured Persons** must not disclose, either personally or through any person or entity acting on the **Insured's** and/or **Insured Persons'** behalf or at their direction, to any **Third Party**:

- (a) the existence of this **Policy**;
- (b) the nature of the coverage provided;
- (c) the **Limit of Liability**; or
- (d) the amount of **Premium** paid.

However, an **Insured** or **Insured Persons** may disclose the above matters to the extent that:

- i) the **Insured** is required to do so by law; or

- ii) **We** consent to the disclosure in writing, or
- iii) **We** provide a Certificate of Currency which can be provided to **Third Parties**.

6. Construction and Interpretation

- (a) Clause headings are for reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- (b) Unless the contrary intention appears in this **Policy**, words in the singular include the plural and vice versa;
- (c) References to statutes include any amendments thereof, regulations thereunder, and re-enactments or consolidations thereof and any subsequent, replacement, successor or equivalent legislation.

7. Goods and Services Tax

- (a) Where **You** make a payment under this **Policy**, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** would have been entitled to had the payment been applied to acquire such goods, services or other supply;
- (b) If any party requires a tax invoice or the assistance of any other party to obtain an Input Tax Credit the other party will provide such invoice or assistance promptly upon being requested to do so;
- (c) For the purpose of this condition "GST" and "Input Tax Credit" have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and, unless the context otherwise requires, other expressions used in this section have the meanings given to those expressions in that Act.

8. Law & Jurisdiction

This **Policy** shall be governed by the laws of the State or Territory of the Commonwealth of Australia in which this **Policy** is issued and subject to the exclusive jurisdiction of any competent court in the Commonwealth of Australia.

9. Other Insurance

In the event of any other valid insurance or indemnity being available to **You** or **Insured Person(s)** or in respect of any self-insured amount, subject to the *Insurance Contracts Act 1984 (Cth)*, this **Policy** will only cover **You** over and above any such other insurance, indemnity or self-insured amount.

In the event of a **Claim** you must disclose any other insurance or indemnities that may be available to **You** or **Insured Person(s)**.

10. Named Insured as Agent of all Insureds

The **Named Insured** will be considered the agent of all **Insureds** and will act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this **Policy**, and the acceptance of any endorsements to this **Policy**. The **Named Insured** is responsible for the payment of all **Premiums** and **Retention(s)**, cancellation of the **Policy** and for receiving any return **Premiums**.

11. Sanction Limitation Clause

We shall not be deemed to provide cover and **We** shall not be liable to pay any claim or provide any benefit under the **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

12. Severability and Non-Imputation

Where this **Policy** provides cover to more than one party:

- (a) a failure to comply with the **Insured's** duty of disclosure under the *Insurance Contracts Act 1984 (Cth)* or other misrepresentation shall not prejudice the rights of any other **Insured** under this **Policy**; and
- (b) the conduct of one **Insured** shall not be imputed to any other **Insured**, provided that the other **Insured** is innocent of and had no prior knowledge of such failure, misrepresentation, or conduct.

13. Valuation and Foreign Currency

All currency amounts under this **Policy** are expressed and payable in Australian Dollars. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this **Policy** is stated in a currency other than Australian Dollars, payment under this **Policy** will be made in Australian Dollars at the cash rate of exchange for the purchase of Australian Dollars published by the Reserve Bank of Australia on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

CLAIMS CONDITIONS

Where applicable, the conditions set out below must be complied with by the **Insured**.

If any of these conditions are not complied with by the **Insured**, subject always to the *Insurance Contracts Act 1984*, **We** may be entitled to refuse to pay or reduce **Our** liability for any claim under this **Policy** by an amount which fairly represents the extent **Our** interests were prejudiced because of the **Insured's** non-compliance

1. Action by the Insured

You must give **Us** written notice of any **Claim**, writ, or summons as soon as reasonably practicable during the **Policy Period** and provide **Us** with all further information and assistance that **We** reasonably require to investigate a **Claim**.

You must co-operate with and assist **Us** in the management of any claim to the extent **We** reasonably request, including:

- (a) providing **Us** with all such additional documentation and information relating to the **Claim** as **We** reasonably request;
- (b) allow **Us** to defend or settle the **Claim** in **Your** name and on **Your** behalf, or on behalf of any other party covered by this **Policy**; and/or
- (c) take reasonable steps to preserve as far as reasonably practicable, any product,

appliance or other equipment which could be necessary or useful as evidence in the event of litigation, or for the purposes of negotiating settlement of the **Claim**.

2. Address for Notifications

All notifications to **Us** and documents relating to any **Claim** must be delivered in writing to:

Email: claims@hutchunderwriting.com.au

3. Allocation

1. If a **Claim** and/or loss includes both covered and uncovered elements under this **Policy**, **We** and **You** ("the parties") will agree upon a fair and proper allocation between the covered and uncovered **Claim** and/or loss, including **Defence Costs**.
2. Where the parties cannot agree on allocation, it will be determined by a Senior Counsel who will be appointed by agreement between the parties or in the absence of an agreement, will be nominated by the proper person at the Resolution Institute.
3. The Senior Counsel's determination on allocation will be based on written submissions only and will be final and binding on both parties.
4. The costs of the Senior Counsel's opinion and recommendation on allocation will be deemed part of the **Defence Costs**.

4. Retention

- (a) **We** will only be liable for that part of any **Claim** and/or loss which exceeds the **Retention**;
- (b) The **Retention** applies separately to each **Claim** and/or loss, unless otherwise stated by **Us**;
- (c) Where the **Retention** is shown in **Your Schedule You** are liable to pay **Defence Costs** and any other costs and expenses incurred in investigating, defending and settling a **Claim** up to the amount of the **Retention**;
- (d) The **Retention** does not apply to any costs and expenses incurred by **Us** to determining whether **You** are covered under the **Policy**.

5. Advancement of Costs

With **Our** written consent, which will not be unreasonably withheld or delayed,, **We** will advance **Your Defence Costs** as they are incurred and prior to the final adjudication of a **Claim**.

If **You** are not entitled to coverage under the terms and conditions of the **Policy**, then **We** will cease to advance such **Defence Costs** and any amounts previously advanced shall be repaid to **Us**.

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all **Defence Costs** provided that:

- (a) **We** have not denied cover under the **Policy** and where cover is denied, only up to the point of any denial of cover; and

- (b) **Our** written consent, which will not be unreasonably withheld or delayed, is obtained prior to **You** incurring such **Defence Costs** (which shall not be unreasonably delayed or withheld).

6. Defence and Settlement

- (a) **We** have the right to take over the conduct of the defence or settlement of any **Claim** in **Your** name and **You** must not admit liability for, settle any **Claim** or incur any **Defence Costs** without **Our** written consent, which will not be unreasonably withheld or delayed.
- (b) Subject to paragraph (c) below, if **You** refuse to consent to or accept any proposed settlement or recommendation made by **Us** in respect of a **Claim** or continue any legal proceedings in connection with the **Claim**, then **Our** liability to indemnify **You** will be limited to the amount for which the **Claim** could have been settled and **Defence Costs** incurred up to the date of **Your** refusal, less the **Retention**.
- (c) In the event of a dispute between **Us** and **You** on whether either party should be required to defend or contest a **Claim**, the parties will agree to the appointment of a Senior Counsel to provide an opinion and make recommendations on whether a **Claim** should be defended or attempted to be settled and if applicable, the terms of an appropriate settlement. The Senior Counsel will take into consideration all relevant issues including the prospects of **You** successfully defending the **Claim**, the economics of the matter, the damages and costs which are likely to be recovered by the claimant and the likely **Defence Costs**.
- (d) The Senior Counsel referred to above, will be mutually agreed upon, or in the absence of agreement, will be nominated by the proper person at the Resolution Institute. The cost of the Senior Counsel's opinion and recommendations will be deemed part of the **Defence Costs**.
- (e) If in **Our** opinion the total amount payable in respect of a **Claim** is unlikely to exceed the **Retention**, **We** have the right to instruct **You** to conduct the defence of the **Claim**. If **We** do so, and in the event that the amount paid to dispose of the **Claim** exceeds the **Retention**, **We** will reimburse **You** for all reasonable **Defence Costs**.

However, **We** reserve the right to take over conduct of the **Claim** as provided in paragraph (a) above, should it appear to **Us** that the **Retention** may be eroded.

7. Fraudulent Claims

If any **Claim** and/or loss covered under this **Policy** shall be in any way fraudulent or if any fraudulent means or devices are used by **You** (or anyone acting on **Your** behalf) to obtain any benefit under this **Policy**, **We** will, without prejudice to any other right(s) that **We** may have under the **Policy**, be entitled to refuse to pay such **Claim** and/or loss, including any **Defence Costs**, subject always to the Insurance Contracts Act 1984.

8. Mitigation

You must take all reasonable steps and precautions to avoid and minimize any liability or loss which may be or is the subject of a **Claim** covered under this **Policy**.

9. Subrogation

1. If **We** make any payment under this **Policy** (including **Defence Costs**), **We** will be subrogated to all rights of recovery and remedies available to **You** in relation to that payment. **We** will then have the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in **Your** name;
2. **You** will provide all assistance and information as **We** reasonably require to enforce these rights and remedies.
3. Any amounts recovered will be applied in the following order:
 - (i) first to **Our** benefit for any expenses incurred in enforcing subrogated rights and remedies;
 - (ii) then to **Your** benefit if **You** have contributed to a payment exceeding the **Limit of Liability** made to resolve a **Claim** up to the amount of that payment;
 - (iii) then to **Our** benefit for any payments made under the **Policy**; and
 - (iv) then to **Your** benefit for any additional amounts recovered.
4. **We** will not exercise any rights against any **Employee** of the **Named Insured** unless a loss has been brought about or contributed to by any dishonest, fraudulent, criminal, reckless or malicious act or omission of such **Employee**.

GENERAL DEFINITIONS

We use words and expressions in this **Policy** which have specific meanings. Where they appear throughout the **Policy** they start with a capital letter, appear in bold font and have the meaning set out below.

Act of Terrorism means an act, including but not limited to, the use of force or violence or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

Act of Parliament means any Act of the Parliaments of the Commonwealth of Australia (and/or Australian States and Territories) or New Zealand, including regulations and other legislative instruments made pursuant to an Act of Parliament

Aggregate Limit of Liability means the total amount specified in the Schedule that **We** will pay for all coverage sections insured under the Policy.

Aircraft means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.

Authority means any regulator, government body, government agency, disciplinary body, criminal authority, official trade body, or any other person or body:

- (a) having legal authority to conduct an investigation into the conduct and or affairs of an **Insured**; or
- (b) appointed, constituted or acting under a delegation pursuant to an **Act of Parliament** for the purposes of enforcement of such an **Act of Parliament**.

Bail and Civil Bond Expenses means the reasonable premium (but not collateral) for any bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for bail required by a court in respect of any **Claim** including any premium paid for an appeal.

Bodily Injury means physical injury, death, mental injury, mental illness, mental anguish, shock, sickness, disease or disability.

Business means **Your** business activities as specified in the **Schedule**.

Change of Control means any change in **Control** of the **Named Insured** resulting from one of the following events:

- (a) the **Named Insured** consolidates with, merges into or sells all or a majority of its assets to a **Third Party**;
- (b) a **Third Party** becomes entitled to **Control** the **Named Insured**;
- (c) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Named Insured** or have control over the appointment of

Directors who are able to exercise a majority of votes at board meetings of the company;

- (d) the **Named Insured** lists its **Securities** on any securities exchange or market; or
- (e) the **Named Insured** is placed into external administration, receivership, liquidation or similar.

Civil Liability means a legally enforceable obligation to a third party to pay **Damages**, or other compensation in accordance with:

- 1. an award of court;
- 2. an award of a tribunal
- 3. an award or direction of an external dispute resolution scheme of which the Insured is required to be a member or of which membership is standard industry practice; or
- 4. a direction of a regulator to whose authority the **Insured** is required to submit made validly and within such regulator's legal powers; and

includes any settlement of such an alleged legally enforceable obligation, negotiated with **Our** prior written consent, which will not be unreasonably withheld or delayed, in accordance with Claims Condition 5. Advancement of Costs

With **Our** written consent, which will not be unreasonably withheld or delayed,, **We** will advance **Your Defence Costs** as they are incurred and prior to the final adjudication of a **Claim**.

If **You** are not entitled to coverage under the terms and conditions of the **Policy**, then **We** will cease to advance such **Defence Costs** and any amounts previously advanced shall be repaid to **Us**.

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all **Defence Costs** provided that:

- (c) **We** have not denied cover under the **Policy** and where cover is denied, only up to the point of any denial of cover; and
- (d) **Our** written consent, which will not be unreasonably withheld or delayed, is obtained prior to **You** incurring such **Defence Costs** (which shall not be unreasonably delayed or withheld).

Defence and Settlement

Claim means the definition shown in the individual coverage section of this **Policy** under which indemnity is sought. All claims arising from the same act, error or omission or consequent upon or attributable to one source, act, error or omission, event, transaction, advice, decision or original cause, will be deemed to be a single Claim.

Client Network Infection means the actual or alleged transmittal from **Your Computer System** to **Your** client's **Computer System** in the conduct of the **Business**, of a **Computer Virus** or other electronic infection which causes damage to that client's computer or **Computer Network** or disrupts that client's business.

Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not;
- (b) the method of transmission, whether 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
- (c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

Computer System means any computer, hardware, software, application, process, code, program, information technology, communications system or electronic device owned or operated by **You** or any other party. This includes any similar system and any associated input, output or data storage device or system, networking equipment or backup facility.

Computer Network means a group of **Computer Systems** and other electronic devices or network facilities connected via a form of communications technology, including the internet, intranet and virtual private networks, allowing the networked computing devices to exchange **Electronic Data**.

Computer Virus means any malware or program that possesses the ability to create replicas of itself (commonly known as 'auto-reproduction' program) within other programs or operating systems areas, or which is capable of spreading copies of itself wholly or partly to other computer systems or networks and which were not written or created by **You**.

Control has the same meaning as the definition provided under Section 50AA of the *Corporations Act 2001 (Cth)*.

Crypto-Currency means a digital currency or token in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority.

Cyber Loss means any **Claim**, loss, damage, liability, expense, fine or penalty or any other amount directly or indirectly caused by:

- (a) the use or operation of any **Computer System** or **Computer Network**;
- (b) the reduction in, or loss of ability to use or operate, any **Computer System**, **Computer Network** or **Electronic Data**;
- (c) access to, processing, transmission, storage or use of any **Electronic Data**;
- (d) any threat of, or any hoax relating to, clauses (a) to (c) above;
- (e) inability to access, process, transmit, store or use any **Electronic Data**;
- (f) any error or omission or accident in respect of any **Computer System**, **Computer Network** or **Electronic Data**;
- (g) the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**; or

- (h) the **Insured**, or anyone acting on the **Insured's** express or implied authority, being induced by any dishonest act, utilising a **Computer System**, **Computer Network** or **Electronic Data**, to voluntarily part with title to or possession of any property or money.

Damages means loss, judgments and settlements, but does not include fines, penalties, punitive, exemplary, or liquidated damages, or the return, withdrawal or reduction of professional fees or commissions, any equitable relief or any award of legal costs and expenses.

Data Security Breach means the actual or alleged breach, violation, unauthorised interception, unauthorised use, or misuse by any person of any security systems or procedures maintained by the **Named Insured** for storage of its client's confidential information in the conduct of their business.

Defence Costs means all reasonable costs and expenses incurred with **Our** prior written consent, which will not be unreasonably withheld or delayed, in the defence or settlement of any **Claim** against **You**. **Defence Costs** do not include any remuneration, wages, salaries, fees, or overhead expenses of **Yours**.

Any **Defence Costs** paid by **Us** shall be considered to be part of the **Limit of Liability** and in no way serve to increase the **Limit of Liability**.

If a payment in excess of the **Limit of Liability** is made to dispose of a **Claim**, the **Defence Costs** will be paid by **Us** in the same proportion as is the proportion between the payment made by **Us** and the payment made to dispose of the **Claim**.

Deprivation of Assets Proceeding means any proceeding brought by any **Authority** seeking:

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

Director means

any person who is a past, present or future director, officer, member of the board of managers, management board member, management committee member or supervisory board member of an **Insured**.

Discovery Period means the period after the end of the **Policy Period** where an **Insured** or **Insured Person** may continue to notify **Us** of a **Claim** but only

in relation to **Wrongful Acts** committed prior to or during the **Policy Period**.

Documents means any physical documents including but not limited to deeds, wills, agreements, maps, plans, records, books, letters, certificates or forms, whether written, printed or physically reproduced by any other method but will not include:

1. any bearer bonds or coupons, cheques, stamps, bank or currency notes or other negotiable instruments; or
2. any **Electronic Data** which is destroyed or damaged, lost or mislaid by manual, electronic or mechanical act, error or omission.

Electronic Data means facts, concepts and information converted to a form useable for communication, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instruction for such equipment.

Employee means any natural person who:

- (a) was, is, or shall be under a contract of employment with **You** (including any person completing an apprenticeship engaged under any work experience, traineeship or similar program with and under **Your** control).
- (b) was, is, or shall be an independent contractor or any natural person, including volunteers, seconded to an **Insured**, if such individual is under the direction and supervision of the **Insured** and the **Insured** provides indemnification to such individual in the same manner as is provided to the **Employees** referred to in (a) above.

Employment Practices Liability means any liability related to any **Employment Practices Wrongful Act**.

Employment Practices Wrongful Act means any actual or alleged breach of duty, error, act, omission, neglect or misleading statement by an **Insured** against any of the **Insured Persons** in connection with any wrongful, unlawful or unfair:

- (a) discharge or termination of employment, demotion, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote;
- (b) breach of any written or oral employment contract or quasi-employment contract;
- (c) employment-related misrepresentation, invasion of privacy, breach of data protection legislation, humiliation and defamation;
- (d) violation of employment discrimination laws (including sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual orientation, religion, maternity, pregnancy, age and disability);
- (e) violation or non-compliance with legislation regulating working hours;
- (f) failure to grant tenure, adopt adequate workplace or employment policies and procedures or furnish accurate job references;
- (g) retaliatory treatment of whistle-blowers and others; or

- (h) employment-related infliction of mental anguish or emotional distress.

Extradition Proceeding means any formal process by which an Insured Person located in any country is surrendered to any other country for trial or otherwise to answer a criminal accusation.

Family Member means:

1. an **Insured Person's Spouse**, domestic partner or companion; or
2. the parent, sibling, or child of an insured person or of an **Insured Person's Spouse**, domestic partner or companion.

Financial Interest means a financial interest of greater than 10% of the issued capital in a company or more than 10% of the value of any other business or asset.

Funds means Money, securities, negotiable instruments or other tangible property belonging to **You** or in your care custody or control.

Hutch or **Hutch Underwriting** means Hutch Underwriting Pty Limited"

Insured means:

- (a) the **Named Insured**, under their current name or previously registered name, while **Control** of the entity remains unchanged; and
- (b) any **Subsidiary(ies)** of the **Named Insured** in existence at the commencement of the **Policy Period**, but only in respect of any work performed whilst the **Named Insured** has **Control** of the **Subsidiary**;

Insured Person means:

- (a) any natural persons who were, now are or become a **Director**, officer, principal, partner, **Employee** or manager of the **Named Insured** or any **Subsidiary**, but only with respect to the performance of their duties for or on behalf of the **Named Insured** or any **Subsidiary**;
- (b) any natural persons who were, now are or become a **Superannuation Trustee** of the **Named Insured** or any **Subsidiary**;
- (c) the estate, heirs, legal representatives or assigns of any **Insured Person** noted in item (a) above, in the event of the death or incapacity of that **Insured**, but only to the same extent as cover would have otherwise been available to that **Insured**, and subject always to the terms and conditions of the **Policy**.

Insurer(s)/We/Us/Our means certain underwriters at Lloyd's, led by Munich Re Syndicate MRS/457, acting through **Hutch**

Investigation Expenses means all reasonable costs and expenses incurred by **You** with **Our** prior written consent, which will not be unreasonably withheld or delayed, in relation to any judicial review or any official investigation, examination, inquiry or other similar proceedings, or disciplinary or criminal legal proceedings commenced by an Authority to compel any Insured to produce materials/documents or attend any hearing or attend any examination, enquiry or hearing.

Limit of Liability means the amount specified in the **Schedule** for each Section.

Loss means the definition shown in the individual coverage section of this **Policy** under which indemnity is granted.

Named Insured means the individual, partnership, entity or corporation designated as such in the **Schedule**.

North America means the United States of America and Canada and includes any other territory that comes within the jurisdiction of the courts of either nation, or to which the laws of either nation apply.

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

Outside Directorship Liability means the **Management Liability** of any **Outside Director**, but solely in excess of any valid and collectible insurance held by the **Outside Entity**.

Outside Entity means an entity, including any not for profit entity, but other than:

- (a) a **Subsidiary**;
- (b) an entity incorporated or domiciled in the United States of America or its territories or protectorates;
- (c) any financial services entity, including but not limited to: commercial bank, merchant bank, investment bank, credit union, building society, insurance or reinsurance companies, international insurance brokers, reinsurance brokers, investment firm, investment or financial advisor/manager or fund manager;
- (d) an entity that has its securities listed on any securities exchange

unless such entity is included by way of endorsement to this **Policy**.

Plan means any single employer superannuation fund established for the benefit of **employees**, but does not include any industry or master superannuation fund, or any superannuation fund or trust set up for the personal benefit of **Employees'** and or the **Insured Person's** related beneficiaries, heirs or legal representatives.

Policy means:

1. this contract of insurance, including the Certificate of Insurance and **Schedule**, insuring clauses, extensions, conditions, definitions, exclusions and other terms contained herein; and
2. any endorsement attaching to and forming part of this contract of insurance either at inception or during the **Policy Period**.

Policy Period means the period specified in the **Schedule**.

Privacy Breach means a breach of any privacy legislation applicable to the conduct of **Your** business, including, but not limited to, the *Privacy Act 1988 (Cth)*.

Privacy Remediation Expenses means costs and expenses reasonably incurred in advertising, or for

electronic, printed, broadcast or telecast communications, to comply with any law, regulation or order requiring notification of any potential or actual unauthorised access or unauthorised use of an individual's personal information in the conduct of the **Business**, where that information is not publicly available.

Premium means the amount **You** pay for the cover provided by this **Policy** and is specified in the **Schedule**.

Product Liability means legal liability arising out of **Your Products** or any representation or warranty made in relation to **Your Products**.

Property Damage means:

1. physical injury or damage to or defect, impairment or destruction or loss of tangible property including consequential loss or the loss of use of that property; or
2. consequential loss relating to, or loss of use of, tangible property which has not been damaged as defined in paragraph (a) of this definition, provided that such loss of use is caused by or arises out of the physical damage of other tangible property.

Public Relations Expenses means the reasonable fees, costs and expenses in appointing a:

- (a) public relations firm / consultant;
- (b) crisis management firm; or
- (c) law firm,

directly by **You**, with **Our** written consent, which will not be unreasonably withheld or delayed, for the sole purpose of mitigating any adverse or potentially adverse effect on the **Insured's** reputation.

Retention means the amount(s) specified in the **Schedule** or by any endorsement(s).

Retroactive Date means the date specified in the **Schedule**.

Schedule means the schedule on the certificate of insurance.

Security means shares, stock, bearer instruments, derivatives, bonds, warrants, debentures, rights under a depository receipt or other securities (or interests therein) of whatever nature.

Silica means silicon dioxide or any compound containing silicon dioxide, **Silica** particles or **Silica-Related Dust**.

Silica-Related Dust means a combination of **Silica** and other dust particles

Social Engineering Fraud means impersonation of:

- (a) An **Insured Person**;
- (b) **Your** customer;
- (c) **Your** sub-contractor; or
- (d) a party with whom **You** have a written contract for the sale or purchase of goods or services,

by a **Third Party** to manipulate **Your** officer, employee or agent to issue an instruction to a financial institution to debit, pay, deliver or transfer **Funds** to that **Third Party** or another person or entity.

Spouse means a person who is legally married to an **Insured Person** who is a natural person and includes a person in a de facto relationship with an insured person although not legally married to each other.

Statutory Liability means any monetary fine or penalty payable by an **Insured** because of a contravention of an Act of Parliament of the Commonwealth of Australia (and/or Australian States and Territories) or New Zealand.

Statutory Liability does not include any amounts payable as or calculated by reference to:

- (a) **Damages** or compensation;
- (b) compliance, remedial, reparation or restitution costs;
- (c) exemplary or punitive damages;
- (d) any consequential economic loss;
- (e) any requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost; or
- (f) any fine or penalty the insurance of which is prohibited by law (whether statute or common law or otherwise) and where any law prohibits or restricts the payment of any indemnity.

Subsidiary means corporations in which the **Named Insured** directly or indirectly:

- 1. controls the composition of the board of **Directors**; and
 - (i) controls more than 50% of the voting power; or
 - (ii) holds more than 50% of the issued share capital.

Superannuation Trustee means any trustee, committee member or administrator of a **Plan**.

Tax Audit Costs means the reasonable and necessary professional fees and expenses paid to accountants or registered tax agents for advising on and responding to a **Tax Audit Notice** in respect of Your Business. **Tax Audit Costs** do not extend to include **Defence Costs**, amounts payable pursuant to an amended Tax Return including but not limited to any additional tax, duty, government impost or similar, fines or penalties imposed by a government agency following a tax audit.

Tax Audit Notice means a notice received by the **Named Insured** from the Australian Taxation Office or any other Australian (Commonwealth, State or Territory) government **Authority** which has the statutory responsibility to conduct such an investigation or examination in relation to a **Tax Return**.

Tax Return means any documentation legally required to be lodged by the **Named Insured** with the Australian Taxation office or any other Australian (Federal, State or Territory) government **Authority** or agency in respect of taxation, duties, levies or other imposts.

Third Party means a person or persons who are not an **Insured** or their **Employee**, sub-contractor, or related party to any **Insured**.

Third Party Liability means any liability arising from any actual or alleged act, error or omission with respect to any harassment of or discrimination against

any natural person **Third Party** who is not and has not been an **Employee**.

Vehicle means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power, and any trailer made or intended to be drawn by such machine, and any hovercraft.

Watercraft means any vessel, craft or thing made or intended to float on, or in, or travel on or through water.

Wrongful Act means the definition shown in the individual coverage section of this **Policy** under which indemnity is granted.

You/Your/Yours means any **Insured**.

Your Products means any good, item or merchandise (including packaging and containers) manufactured (or which is deemed to be manufactured), grown, extracted, altered, treated, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, installed, assembled, erected or constructed by **You** or on **Your** behalf.

GENERAL POLICY EXTENSIONS

The following benefits automatically apply to this **Policy**. These benefits are included in, and do not increase the **Limit of Liability**.

1. Acquisitions and Mergers

(a) If, during the **Policy Period**, the **Named Insured** acquires or creates a new **Subsidiary** or merges with any other company or entity, **We** will provide automatic cover under this **Policy** for such newly acquired, created or merged entity for a period of up to thirty (30) days from the date of such creation, merger or acquisition (subject always to the **Policy Period**), in respect of any **Claims** arising from that entity's provision of professional services whilst under the **Named Insured's Control**.

We will provide this cover on the following basis:

(i) **You** give **Us** written notice of the acquisition, creation or merger as soon as reasonably practicable, together with any such additional information as **We** may reasonably require; and

the newly acquired, created or merged entity provides the same type of professional services as **Your Business**.

(b) **We** may, at **Our** discretion, agree to provide further coverage to such newly acquired, created or merged entity beyond a period of thirty (30) days, subject to any reasonable additional premium or conditions required for the increase in risk resulting from the creation, acquisition, or merger.

(c) Notwithstanding (a) and (b) above, this additional benefit does not provide any cover in respect of:

(i) any newly created, acquired or merged entity that is domiciled or incorporated in **North America**; or

(ii) any **Claim** arising out of any fact or circumstance known by the merged or acquired entity before the merger or

acquisition date and which the merged or acquired entity at the time knew could result, or should reasonably have expected may result, in a **Claim** against it in the future.

For the purposes of the coverage provided under this additional benefit, the definition of **Insured** is extended to include any such company, **Subsidiary** or other entity created by, acquired by or merged with the **Named Insured**.

2. Continuity

Notwithstanding General Exclusion 14 of this **Policy**, Known Claims or Circumstances, and in the absence of any fraudulent non-disclosure or misrepresentation by **You**, where:

1. a **Claim** is first made and notified to **Us** during the **Policy Period** in relation to the conduct of the **Your** business which arises from a fact or circumstance known by **You** prior to the commencement of the **Policy Period**; and
2. **We** were **Your Management Liability** insurers at the time when **You** first became aware of that fact or circumstance which gave rise to the **Claim** and have continued, without interruption, to be **Your** insurer up until and including the time when the **Claim** was made,

then, **We** will cover **You** for that **Claim** in accordance with the terms and conditions of this **Policy**, provided always that **We** can reduce **Our** liability in respect of any such **Claim** to the extent that **Our** interests are prejudiced as a result of the late notification of the **Claim** or circumstance, subject always to the Insurance Contracts Act 1984.

3. Extended Reporting Period

If this policy is not renewed or replaced with a similar policy, the **Insured** may give written notice to us of any **Claim** or **Direct Financial Loss** in respect of a **Wrongful act** or **Employment Practices Wrongful Act** occurring prior to the end of the insurance period, during a **Discovery Period** immediately following the insurance period of:

- (a) ninety (90) days, granted automatically with no additional premium payable
- (b) at **Our** discretion, an additional **Discovery Period** of up to 84 months. We may, but are not obliged to, offer a **Discovery Period** on such terms and conditions as we may decide in our discretion.

This Extension is not available if this policy is renewed or replaced with any other management liability policy; or cancelled or avoided. Any **Discovery Period** purchased under this Automatic Extension is non-cancellable and the premium paid for the **Discovery Period** is fully earned by us and is non-refundable.

4. Joint Venture Liability

We will cover **You** for **Your** own proportion of liability arising from **Your** conduct as a partner in any joint venture which was disclosed to **Us** provided that:

1. a **Claim** is first made and notified in writing to **Us** during the **Policy Period**;

2. the **Claim** is made by a **Third Party** who does not have a beneficial interest in the joint venture; and
3. no coverage is provided to **Your** joint venture partner.

5. Run-Off Cover

In the event of a **Change of Control** or if the **Named Insured** ceases to exist or carry on business, **We** will continue to provide cover to that **Insured** under this **Policy** until the end of the **Policy Period**, provided that such coverage is provided solely in respect of actual or alleged **Wrongful Acts** occurring prior to the date of the **Change of Control** or cessation of business activities.

SECTION 1 – DIRECTORS & OFFICERS LIABILITY

The cover under Section 1 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “Claims made and notified” basis. This means that this Section covers **Claims** made against an **Insured** which are notified to **Us** during the **Policy Period**.

COVER

1.1 Directors and Officers Liability

We will pay, on behalf of an **Insured Person** up to the **Limit of Liability**, for **Loss** incurred by an **Insured Person** in respect of **Management Liability** and notified to **Us** during the **Policy Period** for which the **Insured Person** is not indemnified by the **Named Insured** or any **Subsidiary** thereof;

1.2 Company Reimbursement

We will pay **You** up to the **Limit of Liability**, for **Loss** in respect of **Management Liability** for which **You** are permitted to and agree to indemnify such **Insured Person(s)** and notified to **Us** during the **Policy Period**;

1.3 Outside Directorship Liability

We will pay, on behalf of an **Outside Director** up to the **Limit of Liability**, for **Loss** arising from a **Claim** first made against an **Insured person** in respect of **Outside Directorship Liability** and notified to **Us** during the **Policy Period**;

LIMIT OF LIABILITY UNDER SECTION 1 DIRECTORS & OFFICERS LIABILITY

Our liability under this Section 1 will not exceed:

1. the **Limit of Liability** for any one **Claim** or loss and in the aggregate under this **Policy**.
2. An amount equal to the **Limit of Liability** in respect of **Defence Costs**.
3. any sub-limit specified in the **Policy** or **Schedule**, and where a sub-limit is specified in the **Policy** or **Schedule**, it will form part of and not be in addition to the **Limit of Liability**.

The inclusion of more than one **Insured Person** or **Insured** for any **Claim(s)** under this **Policy** will not increase any sub-limit or the **Limit of Liability** under this **Policy**.

REINSTATEMENT OF THE LIMIT OF LIABILITY

Notwithstanding the **Limit of Liability** under Section 1, in the event that:

- (a) the **Limit of Liability**; and
 - (b) any other insurance which sits excess of this **Policy**
- are exhausted by payment of **Claim(s)** or loss(es) covered under this **Policy**, **We** agree to reinstate the **Limit of Liability** with respect to **Insured Persons** by a maximum of one additional **Limit of Liability** specified in the **Schedule**.

The reinstated **Limit of Liability** will only apply to subsequent **Claim(s)** or **Loss(es)** which do not arise

from, relate to or are in any way connected with the **Claim(s)** or **Loss(es)** which contributed to the exhaustion of the **Limit of Liability**.

The reinstatement granted under this clause will not apply to any sub-limit specified in this **Policy** or the **Schedule**.

EXTENSIONS OF COVER FOR SECTION 1 – DIRECTORS & OFFICERS LIABILITY

We will only cover **You** for each of these Extensions if they are shown in the **Schedule** as “Insured”.

1. Superannuation Trustee Coverage

We will pay, on behalf of **Insured Persons**, **Loss** arising from a **Claim** first made against an **Insured persons** in respect of their role as a **Superannuation Trustee** of a **Plan**.

2. Retired Insured Persons Coverage

In the event that any of the **Insured Persons** cease to be a **Director** or officer of the **Insured** prior to the expiry of the **Policy Period** for reasons other than:

- (a) disqualification from holding the office of **Director** or officer;
- (b) dismissal from their position as **Director** or officer;
- (c) the acquisition of an **Insured** as noted in **General Policy Extensions - 1. Acquisitions and Mergers**; and/or
- (d) an **Insured** being wound up,

then **Insured Persons** will be entitled to a **Discovery Period** for a period of 84 months at no additional premium, provided always that this **Discovery Period** will not apply where **You** renew or replace this coverage section (whether with **Us** or not).

3. Spouse Liability

We will indemnify the **Spouse** of an **Insured Person** for any **Claim** against such **Insured Person** which is covered under this **Policy**, and the **Claim** for liability is also made against such **Spouse** solely by reason of:

1. his or her status as a **Spouse**; and
2. his or her ownership or other interest in property which is the object of the remedy sought in connection with the **Claim**.

4. Workplace Health & Safety Extension

We will pay on behalf of **Insured Persons**:

- (a) **Defence Costs** arising from any **claim** made against an **Insured Person** where such **Claim** arises from a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.
- (b) **Investigation Expenses** arising from the attendance by an **Insured Person** for examination at, or the production of documents to, any **Investigation** in connection with a breach or alleged breach of any Commonwealth, State or Territory occupational or workplace health and safety legislation.

ADDITIONAL EXTENSIONS FOR SECTION 1 – DIRECTORS & OFFICERS LIABILITY - SUB LIMITED

The following benefits automatically apply to this **Policy** and are subject to aggregate Sub-Limits as stated on the **Schedule**. These Sub-Limits are included in, and do not increase the **Limit of Liability**.

1. Bail Bond and Civil Bond Expenses

We will pay the costs of **Bail and Civil Bond Expenses** for **Insured Persons** incurred in connection with a **Claim** that is covered under this **Policy**, subject to:

- (a) the sub-limit shown on the **Schedule**; and
- (b) no costs or expenses being incurred without **Our** prior written consent, which will not be unreasonably withheld or delayed.

2. Deprivation of Assets Coverage

We will pay the reasonable fees, costs and expenses incurred by **Insured Persons** arising from any **Deprivation of Assets Proceeding(s)** up to the sub-limit listed on the **Schedule**.

3. Court Attendance Costs

We will pay to **You** or on **Your** behalf, court attendance costs for any **Insured Person** who is compelled to, and does, attend court as a witness in relation to a **Claim** covered by this **Policy**.

We will pay at the rate of \$1,000 per day for each day on which that person attended. **Our** liability for all claims under this additional benefit shall not exceed, in the aggregate, the “Court Attendance Costs Sub Limit” stated in the **Schedule**.

No **Retention** shall apply to this additional benefit.

4. Crisis Cover for Insured Persons

Notwithstanding anything to the contrary in this **Policy**, if it is not reasonably possible for **You** to obtain **Our** consent prior to incurring **Defence Costs** which are otherwise covered under Insuring Clause 2 of this **Policy**, **We** will waive our requirement for consent prior to incurring **Defence Costs**, provided that **Our** consent is eventually obtained within 30 days of the first of such **Defence Costs** being incurred.

We will not pay more than the **Crisis Cover for Insured Persons Sub Limit** stated in the **Schedule** for all such fees, costs and expenses incurred during the **Policy Period**.

5. Extradition Costs Coverage

We will pay, on behalf of **Insured Persons**, up to the sub-limit shown in the **Schedule**, for reasonable and necessary fees, costs and expenses (excluding any wages, salaries, fees, and other personal costs) incurred with **Our** prior written consent (which shall not be unreasonably withheld or delayed) in respect of an **Extradition Proceeding** in retaining:

- (a) a counsellor who is registered with the Australian Register of Counsellors and Psychotherapists;

- (b) an accredited tax advisor;
- (c) a public relations consultant.

6. Insured Person Tax Liability

We will pay, on behalf of an **Insured Person**, for any personal liability arising from any unpaid taxes of the **Named Entity** or any **Subsidiary**, provided that:

- (a) the maximum we will pay is the sub-limit specified in the **Schedule**;
- (b) the **Insured Person's** personal liability is solely due to the inability of the **Named Insured** or any **Subsidiary** to pay such taxes; and
- (c) the failure of the **Named Insured** or **Subsidiary** to pay such taxes is not criminal, wilful, or deliberate.

7. Public Relations Expenses

We will pay **Public Relations Expenses**, provided that:

- (a) **You** notify **Us** in writing during the **Policy Period** and within 30 days of **You** first becoming aware of **Your** reputation being brought into question and provide **Us** with full details of the circumstances surrounding the event;
- (b) **We** will not pay more than the aggregate **Public Relations Expenses** Sub Limit shown in the **Schedule** for all such fees, costs and expenses during the **Policy Period**.

OPTIONAL EXTENSIONS OF COVER FOR SECTION 1 – DIRECTORS & OFFICERS LIABILITY

We will only cover **You** for each of these Optional Extensions if they are shown in the **Schedule** as “Insured”.

1. Circumstance/Claim Mitigation Costs

We will pay the **Mitigation Costs**, up to the sub-limit stated in the **Schedule**, provided that each of the following are met:

- (a) notification of the relevant circumstances has been made to the **Us** in accordance with ‘**Claim Conditions – 1. Action by the Insured**’; and
- (b) it is reasonable to expect that if the circumstances notified in accordance with (a) above were to give rise to a **Claim**, it would result in **Management Liability** or **Outside Directorship Liability** that would be covered under this Section, but no such **Claim** has yet been made by the potential plaintiff; and
- (c) the **Mitigation Costs** are reasonably and necessarily incurred by the **Insured Person(s)** or **Outside Director(s)** and the **Mitigation Costs** are paid directly or indirectly to each potential plaintiff for the principal purpose of avoiding a **Claim** being made by that potential plaintiff for a **Wrongful Act**; and

Our liability under this Extension shall not exceed the liability that would have existed under this Section if the **Claim** had been made against the **Insured Person** or **Outside Director** by the potential plaintiff.

2. Insured Person Cyber Fines & Penalties

We will pay the fines and/or penalties, up to the sub-limit stated in the **Schedule**, of any **Insured Person** incurred due to a **Cyber Loss**, provided that each of the following are met:

- (a) the payment of such fines and/or penalties would not be in violation of any law or statute; and
- (b) the fines and/or penalties are imposed by law or **Investigation**.

3. Pre-Claim Inquiry Costs

We will pay the reasonable fees, costs and expenses, up to the sub-limit stated in the **Schedule**, incurred by an **Insured Person**, for the sole purpose of the **Insured Person's** preparation for and response to a **Pre-Claim Inquiry** that has been directed at such **Insured Person**, excluding:

- (c) any compensation owed any **Insured Person** or cost of their time; and
- (d) the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of any **Insured**, the requester or any other third party; and
- (e) any other costs of an **Insured**.

SPECIFIC DEFINITIONS TO SECTION 1 DIRECTORS & OFFICERS LIABILITY

The following Definitions apply only to Section 1. The exclusions listed in the **General Definitions** section and applicable to all Sections of the **Policy** also apply to Section 1.

1. Claim means:

- (a) a suit, summons, statement of claim, writ or similar, proceeding, cross-claim or counter-claim, written demand, brought by a third party for monetary compensation, damages or non-pecuniary relief, or actions solely for declaratory or injunctive relief or other legal remedy against an **Insured Person** alleging a **Wrongful Act**;
- (b) a criminal proceeding commenced by summons or charge against an **Insured Person** alleging a **Wrongful Act**;
- (c) any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging a **Wrongful Act**;
- (d) an **Investigation**; or
- (e) a **Pre-Investigation**.

2. Investigation means a formal or official external investigation, examination or inquiry into the **Named Insured** or an **Insured Person** in their capacity as such **Insured Person** alleging a **Wrongful Act** at which the attendance of the **Insured Person** is first required or requested in writing by the investigating body during the **Policy Period**. **Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which

focuses on an industry rather than the **Named Insured** or an **Insured Person**.

3. Loss means any amount which **Insured Persons** become legally obligated to pay in respect of any **Claim** first made during the **Policy Period**. Such **Claim** must be made against **Insured Persons** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements, **Defence Costs** and **Investigation Expenses**.

4. Management Liability means any **Claim**: for any **Wrongful Act** of any **Insured Person**; arising solely because of any person's status as an **Insured Person**; and

- a) for **Employment Practices Liability** of any **Insured Person**; or
- b) for **Third Party Liability** of any **Insured Person**.

5. Mitigation Costs means the reasonable and necessary costs and expenses incurred by an **Insured Person** or **You** on their behalf during the **Policy Period** in taking action to rectify or mitigate the effects of an actual or alleged **Wrongful Act** by an **Insured Person** or **Insured**, which **You** establish would otherwise have reasonably been expected to give rise to a **Claim**.

Mitigation Costs do not include any costs and expenses:

- (a) incurred after a **Claim** is made;
- (b) incurred without **You** first obtaining **Our** prior written consent (which will not be unreasonably withheld or delayed).

Where such payment reduces the ultimate civil legal liability of:

- (i) both an **Insured Person** and an **Insured**, then the **Mitigation Costs** will be apportioned between the **Insured Person** and **Insured** and **We** shall pay that apportioned to the **Insured Person** but shall not cover that apportioned to the **Insured**;

6. Pre-Claim Inquiry means a verifiable request for an **Insured Person** to:

- (a) appear in a meeting or interview; or
- (b) produce documents, records or information,

where there request is made by:

- (a) an **Insured**;
- (b) an **Insured's** Board of **Directors** (or equivalent management body) on behalf of an **Insured**;

and:

- (i) arises out of an inquiry or investigation by an official body concerning an **Insured** or **Insured Person(s)**; or
- (ii) following a formal written notification to an Official Body by any **Insured, Insured Person** or whistleblower informing them of an actual or suspected material breach of an **Insured Person's** legal or regulatory duties if and to the extent that such inquiry is requested by an official body

Pre-Claim Inquiry shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Insured'** and or Official Body's normal review or compliance process

7. Pre-Investigation means:

- (a) a raid or on-site visit to any **Named Insured** or **Insured Person** by a regulator, established under statute, first occurring during the **Policy Period** that involves the production, review, copying or confiscation of records or interviews of any **Insured Person**; or
- (b) any formal notification by the **Named Insured** or an **Insured Person** to any regulator, established under statute, first given during the **Policy Period**, where the **Named Insured** or an **Insured Person** reasonably considers that a material breach of the **Named Insured's** or the **Insured Person's** legal or regulatory duty has occurred or may occur; or
- (c) an internal inquiry conducted by the **Named Insured** if and to the extent such an inquiry is requested by such regulator or official body, following a formal notification given in (b) above.

8. Wrongful Act means any error, misstatement, misleading statement, act, omission, negligence, breach of duty, defamation, breach of warranty of authority, wrongful trading, or other act actually or allegedly committed or attempted by **Insured Persons** in their capacity as such, of **Named Insured** or as an **Outside Director**.

SPECIFIC EXCLUSIONS TO SECTION 1 - DIRECTORS & OFFICERS LIABILITY

The following Exclusions apply only to Section 1. The exclusions listed in the **General Exclusions** section and applicable to all Sections of the **Policy** also apply to Section 1.

We will not provide cover under this **Policy** for any liability or **Loss** for any **Claim**:

1. Anti – Competitive Practices

Which arises directly or indirectly from or is in any way connected to:

- (a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or
- (b) tortious interference in a **Third Party's** business or contractual relationships.

2. Insured versus Insured

arising out of or instigated against **Insured Persons** (whether in **Your** name or not) by any

other of **Insured Persons**, provided that this exclusion will not apply to:

- (a) any **Claim** brought by **Insured Persons** solely for a contribution or indemnity in respect of a **Claim** brought against any other of **Your** people and which is otherwise covered under another coverage section of this **Policy**; or
- (b) any **Claim** brought in **Your** name as a shareholders' derivative action, provided that such **Claim** is not solicited or assisted by any of **Insured Persons**; or
- (c) any **Claim** brought in **Your** name by a liquidator, administrator, or receiver or manager, provided that such **Claim** is not solicited or assisted by any of **Insured Persons**.
- (d) **Employment Practices Liability**

3. Statutory Liability

which arises directly or indirectly from any actual or alleged breach of any **Act of Parliament**, regulation, or other legislative instrument enacted under the laws of the Commonwealth of Australia, any Australian State or Territory, or New Zealand.

4. Tax

which arises directly or indirectly from or in any way connected to tax obligations of any kind. This exclusion shall not apply to **Extension 6 – Insured Person Tax Liability** in **Section 1 – Directors and Officers liability**.

SECTION 2 – CORPORATE LIABILITY

The cover under Section 2 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “claims made and notified” basis. This means that this Section covers **Claims** made against **You** which are notified to **Us** during the **Policy Period**.

COVER

2.1 Corporate Liability

We will pay **You** up to the **Limit of Liability**, for **Loss** in respect of **Corporate Liability** first made against the **Insured** and notified to **Us** during the **Policy Period**.

LIMIT OF LIABILITY UNDER SECTION 2 CORPORATE LIABILITY

Our liability under this Section 2 will not exceed:

1. the **Limit of Liability** for any one **Claim** or loss and in the aggregate under this **Policy**.
2. an amount equal to the **Limit of Liability** in respect of **Defence Costs**.
3. any sub-limit specified in the **Policy** or **Schedule**, and where a sub-limit is specified in the **Policy** or **Schedule**, it will form part of and not be in addition to the **Limit of Liability**.

The inclusion of more than one **Insured** for any **Claim(s)** under this **Policy** will not increase any sub-limit or the **Limit of Liability** under this **Policy**.

EXTENSIONS OF COVER FOR SECTION 2 – CORPORATE LIABILITY – SUBLIMITED

The following benefits automatically apply to this **Policy** and are subject to aggregate Sub-Limits as stated on the **Schedule**. These Sub-Limits are included in, and do not increase the **Limit of Liability**.

1. Accidental Death

We will pay up to an aggregate amount of \$100,000 for each **Director** who and \$500,000 in the aggregate to the **Named Insured** in the event of the **Accidental Death** of a **Director** during the **Policy Period**.

2. Contract Claim Defence Costs

We will pay **You**, up to the sub-limit amount shown in the **Schedule**, the **Defence Costs** of the **Insured** arising from any **Claim** in connection with an unintentional, alleged breach of any express contract or agreement (written or oral) with any **Third Party**.

OPTIONAL EXTENSIONS OF COVER FOR SECTION 2 – CORPORATE LIABILITY – SUBLIMITED

We will only cover **You** for each of these Optional Extensions if they are shown in the **Schedule** as “Insured”.

1. Tax Audit Costs

We will pay **Tax Audit Costs**, up to the sub-limit shown in the **Schedule**

SPECIFIC DEFINITIONS TO SECTION 2 CORPORATE LIABILITY

The following Definitions apply only to **Section 2 – Corporate Liability**. The exclusions listed in the **General Definitions** section and applicable to all Sections of the **Policy** also apply to Section 1.

Accidental Death means death resulting from: an accident caused by sudden, violent, external and visible means and occurring solely and directly and independently of any other cause including any pre-existing physical or congenital condition; or exposure to the elements.

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

Claim means:

- (a) the receipt of any written demand for compensation or damages or threatening commencement of proceedings against the **Insured** alleging a **Wrongful Act**;
- (b) the service of any civil or arbitral proceeding seeking compensation from the **Insured** in respect of an actual or alleged **Wrongful Act**;
- (c) any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging a **Wrongful Act**;
- (d) any **Tax Audit Costs** incurred by the **Insured**; if **Optional Extension 1 – Tax Audit Costs** is purchased; or
- (e) a criminal proceeding commenced by summons or charge against an **Insured Person** alleging a **Wrongful Act**.

Corporate Liability means any **Claim** for any **Wrongful Act** of any **Insured** except with respect to any **Employment Practices Liability** or **Third Party Liability**.

Loss means any amount which the **Insured** becomes legally obligated to pay on account of any **Claim** first made during the **Policy Period**. Such **Claim** must be made against the **Insured** for **Wrongful Acts** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**.

However, **Loss** does not include any amount for which the **Insured** is absolved from payment, or payable by **Insured** under any warranty, guarantee or for money payable to a **Third Party** for goods or services supplied to the **Insured**.

Wrongful Act means any error, misstatement, misleading statement, act, omission, negligence, breach of duty, defamation, wrongful trading, or other act actually or allegedly committed or attempted by the **Insured**.

SPECIFIC EXCLUSIONS TO SECTION 2 – CORPORATE LIABILITY

The following Exclusions apply only to **Section 2 – Corporate Liability**. The **Exclusions** applicable to all Sections of the **Policy** also apply to **Section 2 – Corporate Liability**.

We will not provide cover under this **Policy** for any liability or **Loss** for any **Claim**:

1. Anti-Competitive Practices

which arises directly or indirectly from, or is in any way connected to:

- (a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or
- (b) tortious interference in a **Third Party's** business or contractual relationships.

2. Breach of Contract

which arises directly or indirectly from, or is in any way connected to, any liability of the **Insured** under any written or verbal contract or agreement (other than as provided in extension 1 Contract Claim Defence Costs of this **Section 2 – Corporate Liability**). However, this exclusion will not apply to any liability that would have attached to the **Insured** in the absence of such contract.

Employment Practices Wrongful Act which arises directly or indirectly from, or is in any way connected to, an **Employment Practices Wrongful Act**

3. Intellectual Property

which arises directly or indirectly from, or is in any way connected to, any actual or alleged misappropriation, infringement, violation, plagiarism, breach of intellectual property or copyright, patent, trademark or trade secret.

4. Statutory Liability

which arises directly or indirectly from any actual or alleged breach of any **Act of Parliament**, regulation, or other legislative instrument enacted under the laws of the Commonwealth of Australia, any Australian State or Territory, or New Zealand.

5. Trading Debts

which arises directly or indirectly from, or is in any way connected to, any trading or business debt incurred by the **Insured**.

6. Tax Liability

which arises directly or indirectly from, or is in any way connected to, tax obligations of any kind (other than as provided in Optional Extension 1. **Tax Audit Costs**, in this **Section 2 – Corporate Liability**).

7. Fees

which arises directly or indirectly from, or is in any way connected to, unpaid fees.

SECTION 3 – EMPLOYMENT PRACTICES LIABILITY

The cover under Section 3 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “Claims made and notified” basis. This means that this Section covers **Claims** made against an **Insured** which are notified to **Us** during the **Policy Period**.

COVER

3.1 Employment Practices Liability
We will pay **You**, up to the **Limit of Liability**, for **Loss** resulting from any **Claim** for **Employment Practices Liability** first made against **You** and notified to **Us** in writing as soon as reasonably possible during the **Policy Period**;

3.2 Third Party Liability
We will pay **You**, up to the **Limit of Liability**, for **Loss** resulting from any **Claim** for **Third Party Liability** first made against **You** and notified to **Us** in writing as soon as reasonably possible during the **Policy Period**.

EXTENSION OF COVER FOR SECTION 3 – EMPLOYMENT PRACTICES LIABILITY - SUBLIMITED

The following benefits automatically apply to this **Policy** and are subject to aggregate Sub-Limits as stated on the **Schedule**. This Sub-Limit is included in, and does not increase the **Limit of Liability**.

1. Workplace Violence

We will pay the reasonable fees, costs and expenses, up to the sub-limit stated in the **Schedule**, for, or on behalf of an **Insured** of:

- (a) a counsellor who is registered with the Australian Register of Counsellors and Psychotherapists, for a(n) **Insured Person(s)**,

arising from an assault on an **Insured Person** which occurs on the premises of and **Insured** or at an activity sponsored by an **Insured**.

SPECIFIC DEFINITIONS APPLICABLE TO SECTION 3.1

The following Definitions apply only to **Section 3 – Employment Practices Liability**. The exclusions listed in the **General Definitions** section and applicable to all Sections of the **Policy** also apply to **Section 3 – Employment Practices Liability**.

Claim means:

1. the receipt of any written demand for compensation or damages or threatening commencement of proceedings against an **Insured** or **Insured Person** alleging an **Employment Practices Liability** or **Third Party Liability**; or
2. the service of any civil or arbitral proceeding seeking compensation from an **Insured** or **Insured Person** in respect of an actual or alleged

Employment Practices Liability or Third Party Liability

3. any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging a **Wrongful Act**.

Loss means any amount which an **Insured** or an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made during the **Policy Period**. Such **Claim** must be made against the **Insured** or the **Insured Person** for **Employment Practices Liability** or **Third Party Liability** for which cover applies, including, damages, judgments, compensation, contributions, or settlements and **Defence Costs**.

Loss does not include:

- (a) any amount for which the **Insured** or **Insured Person** is absolved from payment,
- (b) taxes, fines or penalties imposed by law,
- (c) the multiple portion of any multiplied damage award,
- (d) punitive or exemplary damages, or
- (e) any other amount which is uninsurable under the law pursuant to which this **Policy** is construed.

SPECIFIC EXCLUSIONS APPLICABLE TO SECTION 3 – EMPLOYMENT PRACTICES LIABILITY

The following Exclusions apply only to **Section 3 – Employment Practices Liability**. The **General Exclusions** applicable to all Sections of the **Policy** also apply to **Section 3 – Employment Practices Liability**.

We will not provide cover under this **Policy** for any liability or **Loss** for any **Claim**:

1. Employee Entitlements

based upon, directly or indirectly arising from or attributable to **Employee** benefit arrangements of any kind (whether during or post-employment) including but not limited to:

- (a) any amounts payable under or by reference to any statute or any express or implied term of any employment agreement or otherwise;
- (b) provision for unemployment, redundancy, retirement, sickness, disability;
- (c) provision for any type of leave including but not limited to annual leave, parental leave or personal leave;
- (d) superannuation;
- (e) accident, life, medical, disability or other welfare plans;
- (f) profit sharing or deferred remuneration plans;
- (g) compensation payable in respect of a contract of employment alleged to be unfair.

2. Employee Remuneration

for the payment of any back pay, remuneration or benefit to any **Insured Person** who has been reinstated into their former position after an **Employment Practices Wrongful Act**.

3. Industrial Action

based upon, directly or indirectly arising from or attributable to:

- (a) acts committed during or in connection with any industrial dispute (whether between employer and **Insured Person** or between **Insured Persons** or their unions or generally), strike, picket, lock-out, go slow or work to rule action; or
- (b) collective bargaining negotiation or agreement.

This Exclusion does not apply to **Loss** on account of a **Claim** for **Employment Practices Liability** alleging retaliation.

4. Physical Modification of Premises

based upon, directly or indirectly arising from or attributable to any liability for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Insured** to make the building or property more accessible or accommodating to disabled persons. This Exclusion does not apply to **Defence Costs** incurred as a result of a **Claim** for **Employment Practices Liability** or a **Claim** for **Third Party Liability**.

7. 6. Statutory Liability

which arises directly or indirectly from or is in any way connected to any statute relating to workers compensation, accident compensation or work health and safety.

SECTION 4 – STATUTORY LIABILITY

The cover under Section 4 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “claims made and notified” basis. This means that this Section covers claims made against **You** which are notified to **Us** during the **Policy Period**.

COVER

- 1.1 Insured Person Statutory Liability**
We will pay an **Insured Person**, or **You** on behalf of an **Insured Person**, up to the **Limit of Liability** as shown on the **Schedule**, for **Loss** resulting from any **Claim** first made against an **Insured Person** and notified to **Us** in writing as soon as reasonably possible during the **Policy Period**;
- 1.2 Corporate Statutory Liability**
We will pay **You**, up to the **Limit of Liability** of liability as shown on the **Schedule**, for **Loss** resulting from any **Claim** first made against **You** and notified to **Us** in writing as soon as reasonably possible during the **Policy Period**.

LIMIT OF LIABILITY UNDER SECTION 4 STATUTORY LIABILITY

Our liability under this Section 4 is part of, and not in addition to, the **Limits of Liability** stated on the **Schedule** for **Section 1 – Management Liability**, **Section 2 – Corporate Liability** and **Section 3 – Employment Practices Liability** and will not exceed:

- the **Limit of Liability** for this **Section 4 – Statutory Liability** for any one **Claim** or loss and in the aggregate under this **Policy**;
- An amount equal to the **Limit of Liability** for this **Section 4 – Statutory Liability** in respect of **Defence Costs**.
- any sub-limit specified in the **Policy** or **Schedule**, and where a sub-limit is specified in the **Policy** or **Schedule**, it will form part of and not be in addition to the **Limit of Liability** for this **Section 4 – Statutory Liability**.

The inclusion of more than one **Insured** for any **Claim(s)** under this **Policy** will not increase any sub-limit or the **Limit of Liability** under this **Policy**.

EXTENSIONS OF COVER FOR SECTION 4 – STATUTORY LIABILITY - SUB LIMITED

1. Workplace Health & Safety Defence Cost Extension

Notwithstanding General Exclusion 5 (Bodily Injury and Property Damage), **We** will pay **Defence Costs** and **Investigation Expenses** arising from any **Claim**, first made and notified to **Us** during the **Policy Period**, alleging involuntary manslaughter, gross negligence manslaughter or a **Wrongful Act** in breach of applicable health and safety legislation, including Chain of Responsibility laws relating to the operation of heavy vehicles, in Australia or New Zealand.

Our total liability during the **Policy Period** for all **Claims** under this extension will not exceed the sublimit of liability stated in the **Schedule**.

SPECIFIC DEFINITIONS TO SECTION 4 STATUTORY LIABILITY

The following Definitions apply only to **Section 4 – Statutory Liability**. The exclusions listed in the **General Definitions** section and applicable to all Sections of the **Policy** also apply to **Section 4 – Statutory Liability**.

1. Claim means:

- the receipt of any written communication by a regulatory, governmental, professional or other authorised institution served upon an **Insured** or **Insured Person** alleging a **Wrongful Act** and threatening commencement of legal proceedings;
- the service of any document marking the beginning of legal proceedings against an **Insured** or **Insured Person** alleging a **Wrongful Act**;
- any formal administrative or regulatory proceeding, including an arbitration, mediation, conciliation or alternative dispute resolution proceeding, alleging a **Wrongful Act**; or
- any **Investigation**.

Investigation means a formal or official external investigation, examination or inquiry into an **Insured**, or an **Insured Person** in their capacity as such **Insured Person**, alleging a **Wrongful Act** at which the attendance of the **Insured** or **Insured Person** is first required or requested in writing by the investigating body during the **Policy Period**. **Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **Insured** or an **Insured Person**.

Loss means any **Defence Costs**, **Investigation Expenses** and any **Statutory Liability** arising from a **Claim** notified during the **Policy Period**.

Loss does not include:

- any amounts representing damages or compensation;
- any compliance, remedial, reparation or restitution costs, enforcement orders; or
- any matter deemed uninsurable under the law applicable to this coverage section.

Wrongful Act means any act or omission by the **Insured** or an **Insured Person** that results in an allegation that the **Insured** or an **Insured Person** has committed a contravention of a local, state or federal statute as dictated by an **Authority** which is punishable by **Statutory Liability** or imprisonment.

SPECIFIC EXCLUSIONS TO SECTION 4 – STATUTORY LIABILITY

The following Exclusions apply only to **Section 4 – Statutory Liability**. The **General Exclusions**

applicable to all Sections of the **Policy** also apply to **Section 4 – Statutory Liability**.

We will not provide cover under this **Policy** for any liability or **Loss** for any **Claim**:

1. Anti-Competitive Practices

arising directly or indirectly out of or in connection with:

- (a) an actual or alleged violation of any law or regulation which regulates or restricts anti-trust or cartel conduct, monopolistic behaviour or practices, price fixing, price discrimination, predatory pricing, unfair or restrictive trade practices; or
- (b) tortious interference in a **Third Party's** business or contractual relationships.

2. Enforcement Order

for payment of any fine (or part of a fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order or for the cost incurred by **You** or an **Insured Person** in complying with any enforcement or remedial order.

3. Corporations Act

arising out of or based upon, attributable to, or in any way involving any breach of sections 182, 183, 601FD, 601FE or 601JD of the *Corporations Act 2001* (Cth) or similar law in any other jurisdiction.

4. Tax

which arises directly or indirectly from or in any way connected to tax obligations of any kind.

5. Vehicles, Aircraft and Watercraft

arising out of an actual or alleged violation of any law or regulation with respect to the use of Vehicles, Aircraft or Watercraft.

This exclusion shall not apply to the coverage extended by **Extension 1 – Workplace Health & Safety Defence Cost Extension** in this **Section 4 – Statutory Liability**.

SECTION 5 – CRIME COVERAGE

The cover under Section 5 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “claims made and notified” basis. This means that this Section covers claims made against **You** which are notified to **Us** during the **Policy Period**.

COVER

5.1 Crime **Cover**
We will pay **You**, to the extent permitted by law and up to the **Limit of Liability**, for **Direct Financial Loss** first **Discovered** and first notified to **Us** during the **Policy Period**.

5.2 Investigation Costs Cover
We will pay **You**, up to the sub-limit stated on the **Schedule**, for reasonable fees, costs and expenses of a fraud investigator, incurred with **Our** prior written consent, which will not be unreasonably withheld or delayed,, to establish the existence and/or amount of any covered **Direct Financial Loss, Third Party Crime, or Theft**. If the **Insured** is unable to establish a covered **Direct Financial Loss, Third Party Crime** or **Theft**, any fees, costs and expenses incurred by or on behalf of the **Insured** will be the responsibility of the **Insured** and not **Us**.

SPECIFIC DEFINITIONS TO SECTION 5 – CRIME COVERAGE

The following Definitions apply only to **Section 5 – Crime Coverage**. The exclusions listed in the **General Definitions** section and applicable to all Sections of the **Policy** also apply to **Section 5 – Crime Coverage**.

Claim means **Direct Financial Loss**

Computer Fraud means the unlawful loss of the **Insured’s** money as a result of the loss of control of a computer system, by manipulation of computer hardware, software programmes or systems, by any person to which the **Insured** has not given authorised access.

Direct Financial Loss means means the direct loss of **Funds**:

- (a) owned by the **Insured**; or
- (b) in the care, custody or control of the **Insured** and for which the **Insured** is legally liable,

sustained by the **Insured** as a result of a single act or series of related, continuous or repeated acts of **Employee Fraud, Third Party Crime, Computer Fraud** or **Theft** on or after the **Retroactive Date**.

Discovered means the moment at which any **Insured Person**, not in collusion with any person(s) suspected of **Employee Fraud, Third Party Crime** or **Theft**, or a **Wrongful Act** as defined in any other section of the **Policy**, becomes aware of a **Direct Financial Loss** or a notifiable **Wrongful Act**.

Employee Fraud means an act or acts of fraud or dishonesty committed by an **Insured Person** acting alone or in collusion with others (including other

Insured Persons or **Third Parties**), which results in an actual personal gain for the **Insured Person** (other than salary, commission, fees, bonus, promotion, award, profit sharing, pension or any other employment benefit), and which such **Insured Person** knows will cause the **Insured** to suffer **Direct Financial Loss**.

Investigation means a formal or official external investigation, examination or inquiry into the **Insured**, or an **Insured Person** in their capacity as such **Insured Person**, alleging a **Wrongful Act** at which the attendance of the **Insured Person** is first required or requested in writing by the investigating body during the **Policy Period**. **Investigation** does not include any routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than the **Insured** or an **Insured Person**.

Social Engineering Fraud means impersonation by any means of:

- (a) an **Insured Person**;
- (b) **Your** client or customer;
- (c) **Your** sub-contractor;
- (d) a party with whom **You** have a written contract for the sale or purchase of goods or services,

by a **Third Party** to manipulate an **Insured Person** to issue an instruction to a financial institution to debit, pay, deliver or transfer **Funds** from any account maintained by **You** to that **Third Party** or another person or entity.

Theft means the unlawful taking of the **Insured’s** money, securities or property, by a person who is not an **Insured Person**, occurring:

- (a) within the premises of the **Insured**,
- (b) within the interior of any banking premises; or
- (c) while in transit and in the care, custody and control of an **Insured Person** following the actual or threatened use of force or violence.

Third Party Crime means an act or acts, committed by a person who is not an **Insured Person**:

- (a) which causes the **Insured** to act upon or give value for a negotiable instrument that is an imitation of an authentic negotiable instrument and which deceives an **Insured Person** into believing that the imitation is the authentic original negotiable instrument; or
- (b) which is the signing or endorsing or copying of the signature in the name of a genuine person by another person without authority and with the intent to deceive. Such signature must have been written on a cheque, a credit card, a credit card transaction slip or a bill of exchange, received or given by the **Insured** in consequence of which the **Insured** have

acted or transferred funds or goods causing the **Insured** to sustain a loss.

- (b) client or customer of the **Insured**; or
- (c) a party with which the **Insured** has a written contract for the sale or purchase of goods or services,

OPTIONAL EXTENSION – SOCIAL ENGINEERING FRAUD

5.3 Social Engineering Fraud

We will pay, up to the sub-limit shown in the **Schedule**, on behalf of the **Insured** for any **Direct Financial Loss**:

- (a) directly resulting from **Social Engineering Fraud**; and
- (b) which is first **Discovered** and first notified to **Us** during the **Policy Period**.

by a **Third Party** to manipulate an **Insured Person** to issue an instruction to a financial institution to debit, pay, deliver or transfer money or securities from an account maintained by the **Insured** to that **Third Party** or another person or entity.

This exclusion does not apply to the optional extension for **Social Engineering Fraud**.

SPECIFIC EXCLUSIONS TO SECTION 5 – CRIME COVERAGE

The following Exclusions apply only to **Section 5 – Crime Coverage**. The exclusions listed in the **General Exclusions** section and applicable to all Sections of the **Policy** also apply to **Section 5 – Crime Coverage**.

We will not provide cover under this **Policy** for any liability or **Claim** which arises directly or indirectly from, or is any way connected to:

1. Agents

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

2. Closely held

any **Direct Financial Loss** caused by or involving any person who owns or controls more than 10 per cent of the issued share capital of the **Insured**.

3. Trade secrets

loss of or damage to any trade secrets, confidential processing methods or confidential information of any kind.

4. Indirect loss

indirect or consequential loss or damage or destruction to any premises or building.

5. Loss sustained after Discovery

any **Direct Financial Loss** sustained after the **Direct Financial Loss** was first **Discovered**.

6. Natural Perils

any loss or damage caused by typhoon, hurricane, cyclone, volcanic eruption, earthquake, subterranean fire or other convulsion of nature and contemporaneous or ensuing loss or damage by fire, flood or looting.

7. Retroactive Date

related to any **Employee Fraud**, **Third Party Crime**, **Computer Fraud** or **Theft** which occurred before the **Retroactive Date** as stated on the **Schedule**.

8. Social Engineering

any **Direct Financial Loss**, **External Crime** or **Theft** caused or contributed to by the impersonation by any means of:

- (a) an **Insured Person**;

SECTION 6 – CYBER LIABILITY

The cover under Section 6 of this **Policy**, which applies only if it is specified in the **Schedule**, is provided on a “claims made and notified” basis. This means that this Section covers **Claims** made against **You** which are notified to **Us** during the **Policy Period**.

COVER

7.1 Third Party Cyber Liability

We will pay **You**, up to the **Limit of Liability** shown in the Schedule for **Section 6 – Cyber Liability** against:

- (a) any **Claim** made against **You** for a **Data Security Breach**;
- (b) any **Claim** made against **You** for a **Client Network Infection**; and

which first occurs after the **Retroactive Date** and is first discovered by **You** and notified to **Us** during the **Policy Period**. General Exclusion 7. Cyber Loss will not apply to this Section.

SPECIFIC DEFINITION APPLICABLE TO SECTION 6

Solely in respect of Section 6 – Cyber Liability, the following definition will apply:

Claim means:

1. a written demand received by **You** for money or services;
2. a civil proceeding against **You** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. arbitration, mediation, or other alternative dispute resolution proceeding against **You** seeking monetary damages or non-monetary or injunctive relief, commenced by the receipt of a written demand, service of a complaint or similar pleading;
4. a written request directed at **You** to toll or waive a statute of limitations applicable to a matter referenced in paragraphs 1. to 3. above.

Loss means any amount that **You** are liable for under a covered **Claim**.

SPECIFIC CONDITIONS APPLICABLE TO SECTION 6

In addition to the General Conditions applying to all Sections, the following conditions apply to Section 6:

1. It is a condition precedent to cover that **You**:
 - (a) maintain firewalls, anti-virus and malware prevention solutions on **Your Computer Systems** and update the protection in accordance with manufacturer recommendations;
 - (b) implement ongoing patch management process to ensure timely patching of **Your Computer Systems**;
 - (c) validate any new or amended bank details by telephone with a known contact at the transferee prior to making any transfer.

If this condition is not complied with, subject always to the Insurance Contracts Act 1984, **We** may be entitled to refuse to pay or reduce **Our** liability for any **Claim** under this **Policy** by an amount which fairly represents the extent **Our** interests were prejudiced as a result of the non-compliance.

2. **You** must give **Us** written notice as soon as reasonably practicable of the discovery of any conduct that is fraudulent or dishonest by any person with access to or control of **Your Funds** or any lack of integrity by such person whether giving rise to a **Claim** or not.
3. On discovering a loss or circumstances likely to give rise to a loss covered by Section 6, **You** must, at **Your** own expense:
 - (a) as soon as reasonably practicable give written notice to **Us**;
 - (b) as soon as reasonably practicable give written notice to the police;
 - (c) within 28 days of discovering a loss or circumstances likely to give rise to a loss covered by Section 6, provide to **Us** a written statement containing details of the cause, description and amount of the loss and any other information that **We** may reasonably require;
 - (d) complete any claim form or sworn proof of loss that **We** may require;
 - (e) provide full assistance and cooperation to **Us** in investigating the loss; and
 - (f) take all reasonable steps to obtain recovery of the loss and prevent any further loss.
4. **We** may engage, at **Our** expense, a computer forensics specialist or security specialist to investigate any alleged **Data Security Breach** or **Client Network Infection**.

If **We** do so, **You** shall cooperate reasonably with such specialist's investigation.

SPECIFIC EXCLUSIONS APPLICABLE TO SECTION 6

In addition to the general exclusions applying to all Sections, under Section 6 **We** will not be liable for any **Claim**:

1. covered under any other section of this **Policy**;
2. unless **You** have previously exhausted **Your** rights and entitlements under any other fidelity bond or fund, whether of a statutory nature or not;
3. connected with any further **Cyber Crime** or **Data Security Breach** committed after the initial discovery of loss;
4. arising out of a **Cyber Crime** or **Data Security Breach** committed prior to the **Policy Period**;
5. for **Consequential Loss**; For the purposes of this exclusion, **Consequential Loss** means any liability which attaches to the **Insured** as a consequence of its negligent acts, errors or omissions, including but not limited to, any

loss of profits, loss of anticipated profits, loss of goodwill, loss of reputation or loss of production suffered by any third party.;

6. resulting directly or indirectly out of, or in connection with:
 - (a) failure to follow Specific Condition 1 of Section 6.
 - (b) the actual or alleged intentional release or disclosure of confidential information by **You** which is alleged to be in violation of any statute, regulation, ethical rule, court or arbitral order, or confidentiality agreement;
 - (c) **Your** actual or alleged intentional transmittal of a **Computer Virus** or other electronic infection;
 - (d) the costs of repairing, replacing, or modifying **Your** data security system or clearing **Your** computers or network of viruses and electronic infections, either preventatively or in response to a **Claim**;
 - (e) the costs of restoring, re-collecting, repairing or replacing **Electronic Data**.
 - (f) war, riot, civil commotion, insurrection, or usurpation of governmental power;
 - (g) any governmental authority seizing or gaining access to **Your** computer or **Computer Network**;
 - (h) any proceedings against **You** before a governmental agency in connection with a **Data Security Breach** or **Client Network Infection**, including any audit or other investigation by such governmental agency; and
 - (i) any **Claim, Damages** or **Defence Costs** for which **You** are entitled to an indemnity under any other part of this **Policy**.