

# hutch

UNDERWRITING



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cover.**

# PROFESSIONAL INDEMNITY INSURANCE

## For Design and Construction

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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 or intermediary 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 (Hutch Underwriting) 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 of certain underwriters at Lloyd's, led by Munich Re Syndicate 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](mailto: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 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](http://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 or intermediary 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 intimated 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.

If **Your** failure to tell **Us** is fraudulent, **We** may refuse to pay a claim and treat the contract as if it never existed.

#### 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 deductibles 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**.

#### Average provision and Allocation of loss between the Insured and Insurers

One of the **Policy** terms provides that if **You** incur loss covered by the **Policy** with other loss that is not covered by the **Policy**, or if a claim is made against **You** and it is impossible to identify whether loss is attributable exclusively or primarily to a covered cause, or the claim against **You**, as appropriate, then **You** together with **Us** will use our best efforts to agree to a fair and proper allocation of the loss between **Us** and **You**. Please refer to the policy wording for full details.

The **Policy** may also provide that, where the amount required to dispose of a claim exceeds the limit of the **Limit of Liability** in the **Policy**, **We** will be liable only for a part of the total costs and expenses which will be the same proportion of the total expenses as the limit bears to the total amount required to dispose of the claim.

#### 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 promote consumer confidence 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](http://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](http://www.insurancecode.org.au)

### **Cooling Off Period**

If **You** change **Your** mind within 14 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 14 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](http://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](mailto: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:

Complaints Officer

Hutch Underwriting Pty Ltd

Telephone: 1300 256 056

Email: [complaints@hutchunderwriting.com.au](mailto:complaints@hutchunderwriting.com.au)

We will acknowledge we have received your complaint and aim to resolve the complaint to your satisfaction.

A complaint decision will be provided to you within 30 calendar days. If we are unable to meet this timeframe we will inform you of the reason for the delay.

If your complaint is not resolved to your satisfaction, or you do not receive a complaint decision within 30 calendar days of the date on which you first made the complaint, you can refer your complaint to the Australian Financial Complaints Authority (AFCA).

AFCA can be contacted as follows:

Telephone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Post: GPO Box 3 Melbourne VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

AFCA services are provided to you free of charge. Your complaint must be referred to AFCA within 2 years of the complaint decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may have access to other external dispute resolution options.

The Underwriters participating on this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice, and the Underwriters will submit to the jurisdiction of any competent Court within the Commonwealth of Australia;
- (ii) service of any originating process upon the Lloyd's Underwriters may be affected upon:

Lloyd's Underwriters' General Representative in Australia

Post: PO Box R1745

Royal Exchange NSW 1225

Email: [serviceofsuitaus@lloyds.com](mailto:serviceofsuitaus@lloyds.com)

who has authority to accept service on the Lloyd's Underwriters' behalf until the appointment of another agent for service which is notified to the insured;

- (iii) if a suit is instituted against "Certain Underwriters at Lloyd's subscribing this policy", it is binding on all Lloyd's Underwriters participating on this Insurance as if they had each been individually named as a defendant.

In the event of a claim arising under this Insurance notice should be given as soon as reasonably practicable to:

The Claims Manager

Telephone: 1300 256 056

Email: [claims@hutchunderwriting.com.au](mailto:claims@hutchunderwriting.com.au)

Web: [hutchunderwriting.com.au/claims](http://hutchunderwriting.com.au/claims)

## 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** or the claims administrator reserve the right to appoint a loss adjuster.

If required by **Us** or the Insurer or the claims administrator **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](mailto: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 or intermediary 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

Subject to payment of the required premium, **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 sums insured or **Limit of Liability** applying to the applicable cover or section, less any **Deductible**. 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 78-30 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 **Policy**.

**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** may 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 78-30 liability.

**Claims for Property Damage** will be paid under the basis of GST inclusive cost of repair or replacement unless **You** are entitled to an input tax credit on the repair or replacement, in which case **We** will deduct the amount of that input tax credit from the claim.

### 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 other person under this **Policy** for loss arising from any **Claim**, **Defence Costs**, **Investigation Expenses** or any other loss or liability under this **Policy** arising out of, 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

for or arising out of based upon or attributable to or in any way relating to 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. Claims by Associates

any **Claim**:

1. by any other party insured under this **Policy**, any of **Your** shareholders/trustees/unitholders or any **Family Member**; or
2. involving any entity, facility or arrangement of any description which, at the date the **Claim** was made against any **Insured** 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) in which any **Insured** or any **Family Member** had a direct or indirect beneficial interest or **Financial Interest**,

#### 6. 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**

#### 7. Cyber Loss

any **Cyber Loss** except to the extent covered under Section 3. Cyber.

#### 8. Dishonesty

1. any dishonest, fraudulent, criminal or malicious act or omission by **You** or by any of **Your** contractors, sub-contractors, or agents whilst acting on **Your** behalf; or
2. any intentional violation or wilful 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

except to the extent covered under Section 1, Additional Benefit Dishonesty of Employees and, if specified as covered in the **Schedule**, Section 1, Optional Extension **Error! Reference source not found**.

#### 9. Employer's Liability

a breach of any obligation owed by **You** as an employer to any **Employee** (including any liability under the workers compensation legislation of the Commonwealth of or any State or Territory of Australia) or prospective employee.

#### 10. Failing to be Qualified or Licensed

1. any **Insured**; or,
2. any contractor, sub-contractor, consultant or any other person working for or on behalf of the **Named Insured**,  
  
failing to be licensed, registered or qualified to perform work in the conduct of the **Professional Business** as required by law.

#### 11. Fines and Penalties

any punitive, aggravated, multiple or exemplary damages, fines or penalties imposed by law or any investigation or **Defence Costs** arising as a consequence thereof.

#### 12. 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

#### 13. Occupation and Use of Property, Plant, Machinery

the actual or alleged ownership, use, occupation or leasing of any property (including land and buildings), plant or machinery.

#### 14. 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.

#### 15. Pollution

Except to the extent covered under Optional Extension 1, of Section 1, Sudden and Accidental Pollution, any claim for Pollution, being:

- (a) any actual, alleged or threatened release, escape, or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
- (b) any direction or request for **You** to test for, monitor, clean up, remove, contain, treat or neutralise **Pollutants**, or any voluntary decision by **You** to do so.

#### 16. Pre-purchase Inspections

any pre-purchase building inspection, or report thereof (whether written or verbal), undertaken by **You** or on **Your** behalf.

#### 17. Product Liability

any **Product Liability**.

#### 18. Territorial and Jurisdictional Limits

1. any act, error or omission committed by **You** within the United States of America or Canada and their respective territories and protectorates, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine, Belarus; 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, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine, Belarus including any other territory that comes within the jurisdiction of the courts of these nations, or to which the laws of these nations apply.

#### 19. Use of Unauthorised or Obsolete Data

the use of, or reliance on, any business valuation or other material or data that is unauthorised or obsolete and outdated.

#### 20. 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 or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
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.

#### 21. 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.

LMA5567A - 18 January 2023

#### 22. Wrongful Employment Act

any actual or alleged **Wrongful Employment Act**.

#### GENERAL CONDITIONS

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

##### 1. 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 **Professional Business**, or a **Change of Control**.

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

## 2. 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**.

## 3. Change of Control

- (a) The **Named Insured** must, as soon as reasonably practicable, give **Us** notice in writing of any **Change of Control** which occurs.
- (b) In the event of a **Change of Control**, **We** will only cover any **Claim(s)** made against the **Named Insured** arising out of the conduct of the **Professional Business** occurring prior to the **Change of Control**.

## 4. 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.

## 5. 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.

## 6. 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.

## 7. Other Insurance

In the event of any other valid insurance or indemnity being available to **You** 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.

## 8. 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 **Deductible(s)**, cancellation of the **Policy** and for receiving any return **Premiums**.

## 9. 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.

## 10. Severability and Non-Imputation

- (a) where this **Policy** provides cover to more than one party, 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.

## 11. 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, summons or **Occurrence** 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:

1. providing **Us** with all such additional documentation and information relating to the **Claim** or **Occurrence** as **We** reasonably request;
2. 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
3. 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** or **Occurrence** must be delivered in writing to:

Email: [claims@hutchunderwriting.com.au](mailto: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. Deductible

- (a) **We** will only be liable for that part of any **Claim** and/or loss which exceeds the **Deductible**;
- (b) The **Deductible** applies separately to each **Claim** and/or loss, unless otherwise stated by **Us**;
- (c) Where the **Deductible** is shown in **Your Schedule** to be "Costs Inclusive" **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 **Deductible**;

The **Deductible** does not apply to any costs and expenses incurred by **Us** to determining whether **You** are covered under the **Policy**.

### 5. 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.
- (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 **Deductible**.
- (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 **Deductible**, **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 **Deductible**, **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 **Deductible** may be eroded.

## 6. 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**.

## 7. 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**.

## 8. 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**.

## 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.

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

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

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

1. the **Named Insured** consolidates with, merges into or sells all or a majority of its assets to a third party;
2. a third party becomes entitled to **Control** the **Named Insured**.

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

**Claim** means:

1. any demand asserting **Civil Liability** against any **Insured** communicated to any **Insured** by whatever means; or
2. any Statement of Claim, Writ, Summons, proceeding or other originating legal or arbitral process, cross-claim or counter-claim served upon any **Insured** asserting **Civil Liability**.

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 **Professional 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, and

- (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)*.

**Cyber Crime** means fraudulent misappropriation of **Funds** by any person acting without any participation or knowledge on **Your** part from **Social Engineering Fraud**, phishing, phreaking or other forms of cyber fraud.

**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 or exemplary damages, or the return, withdrawal or reduction of professional fees or commissions, or any equitable relief.

**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 the **Professional Business**.

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

**Defence Costs** means all reasonable costs and expenses incurred with **Our** prior written consent, which will not be unreasonably withheld, 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**.

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**.

**Design and Construction** means the provision of the activities specified below, by, or under the supervision of, a suitably qualified person who has at least 3 years of experience providing the service:

- a. Design, and advice in respect of design
- b. Drawings and technical documentation
- c. Surveying services
- d. Technical design or specification
- e. Construction management services to a third party
- f. Project management services to a third party
- g. Feasibility studies
- h. Training in respect of a-g of the above

And any other services agreed by **Us** and specified in the **Schedule**.

**Design and Construction** does not include

- a) supervision of construction-related activities or personnel which would normally be undertaken by a building contractor
- b) environmental protection, workplace health and safety or industrial relation matters which would normally be overseen by a building contractor.

**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 person who 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).

**Employee** does not include:

1. any contractors, sub-contractors or agents retained by **You**; and
2. any partner, trustee, shareholder, unitholder or director of the **Insured**.

**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.

**Human Biosecurity Emergency** means a biosecurity emergency as declared under the *Biosecurity Act 2015 (Cth)*.

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

**Inquiry Body** means any official body or institution empowered by law to investigate **Your** professional conduct including but not limited to a coroner's court, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any Royal Commission, parliamentary inquiry or any committee of a parliament.

**Insured** means:

1. the **Named Insured**;
2. any **Subsidiary(ies)** of the **Named Insured** in existence at the commencement of the **Policy Period**, but only in respect of any work performed in the conduct of the **Professional Business** whilst the **Named Insured** has **Control** of the **Subsidiary**;
3. any 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**; and
4. the estate, heirs, legal representatives or assigns of any insured person noted in item (c) 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 457, acting through **Hutch**

**Intellectual Property Breach** means a breach of trademarks, trade secrets, patents, copyright, registered designs or the system or programs of others.

**Investigation Expenses** means all reasonable costs and expenses incurred by **You** with **Our** prior written consent, which will not be unreasonably withheld, in relation to any judicial review or any official investigation, examination, inquiry or other similar proceedings, or disciplinary or criminal legal proceedings:

1. commenced by an **Inquiry Body** to compel any **Insured** to produce materials/documents or attend any hearing; and
2. instituted in connection with the **Professional Business** during the **Policy Period**.

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

**Listed Human Diseases** means diseases listed under the *Biosecurity Act 2015 (Cth)*.

**Manual Work** means any manual or physical labour, including but not limited to construction work and the operation of tools and/or machinery.

**Mitigation Costs** means the reasonable and necessary costs and expenses incurred by **You** during the **Policy Period** in taking action to rectify or mitigate the effects of an act, error or omission by **You** in the conduct of the **Professional Business**, which **You** establish would otherwise have reasonably been expected to give rise to a **Claim**.

**Mitigation Costs** do not include any costs and expenses:

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

**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.

**Occurrence** means an unexpected and unintended event (including continuous and repeated exposure to conditions) which results in **Bodily Injury** or **Property Damage**.

**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**.

**Principal** means the owner or proprietor of a construction project, provided that:

- (a) the **Principal** has no involvement in the design, construction, management or supervision of the project; and
- (b) the **Named Insured** has entered into a written agreement to provide services in the conduct of the **Professional Business** to the **Principal**.

**Privacy Breach** means a breach of any privacy legislation applicable to the conduct of **Your Professional 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 **Professional Business**, where that information is not publicly available.

**Proportionate Liability Legislation** means:

- (a) the Civil Liability Act 2002 (NSW) Part 4;
- (b) Wrongs Act 1958 (Vic) Part IVAA;
- (c) Civil Liability Act 2002 (WA) Part 1F;
- (d) Civil Liability Act 2003 (Qld) Part 2;
- (e) Civil Law (Wrongs Act) 2002 (ACT) Chapter 7A;
- (f) Proportionate Liability Act 2005 (NT);
- (g) Civil Liability Act 2002 (Tas) Part 9A;
- (h) Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Part 3;
- (i) Trade Practices Act (Cth) s.87C;
- (j) Development Act 1993 (SA) s.72;
- (k) Building Act 2004 (ACT) s.141 and s.252 *Building Act 2000 (Tas)*; and

any other similar and applicable legislation in the relevant jurisdiction, as amended, replaced or superseded in the given jurisdiction.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste (including material to be recycled, reconditioned or reclaimed).

**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**.

**Professional Business** means **Design and Construction**.

**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,

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

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

**Schedule** means the schedule on the certificate of insurance.

**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 by digital media (including but not limited to email and social media) of:

- (a) **Your** director, officer, **Employee** or agent
- (b) **Your** 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 **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** 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.

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

1. controls the composition of the board of directors;
2. controls more than 50% of the voting power; or
3. holds more than 50% of the issued share capital.

**Territorial Limits** means anywhere in the world except **North America**.

**Third Party** means a person or persons who are not a **Named Insured** or their employee, sub-contractor, or related party to the **Named Insured**.

**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 Employment Act** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by any **Insured** in connection with the employment by **You** of a person including:

- (a) wrongful dismissal;
- (b) denial of natural justice relating to wrongful termination;
- (c) discharge or termination of employment;
- (d) breach of any oral or written employment contract or quasi-employment contract;
- (e) employment discrimination laws (including workplace and sexual harassment);
- (f) wrongful failure to employ or promote; wrongful discipline;
- (g) wrongful deprivation of a career opportunity;
- (h) negligent evaluation of that person's performance;
- (i) invasion of that person's privacy; and
- (j) employment-related defamation of that person (including by way of an advertisement).

**You/Your/Yours** means the **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.

## SECTION 1 – PROFESSIONAL INDEMNITY

The cover under Section 1 of this **Policy** 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

We will

1. indemnify **You** up to the **Limit of Liability**, for **Damages** arising from any **Claim** first made against **You** and notified in writing to **Us** during the **Policy Period** in respect of **Civil Liability** incurred in the conduct of the **Professional Business**.
2. Included within, and as part of the **Limit of Liability**, pay **Defence Costs** incurred in the defence and/or settlement of any **Claim** under Insuring Clause 1 and any applicable Extension of this **Policy**.

### LIMIT OF LIABILITY UNDER SECTION 1

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** 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 the **Limit of Liability** is exhausted by payment of **Claim(s)** or loss(es) covered under this **Policy**, **We** agree to reinstate the **Limit of Liability** by the multiple of the **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**.

### OPTIONAL EXTENSIONS OF COVER

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

#### 1. Sudden and Accidental Pollution

Notwithstanding General Exclusions 14. Pathogenic Organisms and 15. Pollution but subject always to

General Exclusion 2. Asbestos, **We** will cover **You** for **Claims** first made and notified to **Us** during the **Policy Period** arising out of **Sudden and Accidental Pollution** as a direct result of **Your** negligent act, error or omission in the conduct of the **Professional Business**, provided that:

- (a) **Our** liability for all **Claims** made under this Optional Extension shall not exceed, in the aggregate, the sub-limit specified in the **Schedule** including all **Defence Costs**;
- (b) this coverage is limited to the costs of rectifying only **Your** negligent acts, errors or omissions and specifically excludes any **Consequential Losses**;
- (c) the **Deductible** shown in the **Schedule** applies to this Optional Extension;

For the purposes of this Optional Extension, the following definitions apply:

- (i) **Sudden and Accidental Pollution** means the actual, alleged or threatened: sudden, accidental and unintended discharge, dispersal, release or escape of **Pollutants**; and
- (ii) **Consequential Losses** means any liability which attaches to **You** as a consequence of **Your** negligent acts, errors or omissions, including but not limited to, any loss of: profits, anticipated profits, goodwill, reputation or production suffered by any third party, any costs incurred to clean up any **Sudden and Accidental Pollution** and any **Bodily Injury** or **Property Damage**.

#### 2. Previous Business

**We** will provide cover under this **Policy** to any director, partner or principal of **Yours** for loss arising from a **Claim** for **Civil Liability** against them in their capacity as a director, partner or principal of any previous business disclosed to **Us** prior to inception and named in **Your Schedule**, provided that:

- (a) the previous business was engaged in the same type of professional activities as **Your Professional Business** and the **Claim** arises from the conduct of those activities; and
- (b) details of the previous business are disclosed to **Us** prior to inception of this **Policy**.

#### 3. Novated Contracts

Notwithstanding General Exclusion 3. Assumed Liability, **We** will indemnify **You** for **Damages** and **Defence Costs** resulting from any **Claim** first made and notified to **Us** during the **Policy Period**, arising out of a liability assumed by the **Named Insured** under a novated contract, provided that:

- (a) the novated contract has been disclosed to **Us** in writing and is specified in the **Schedule**; and
- (b) the liability assumed under the novated contract:
  - (i) is directly related to the **Professional Business**, or is assumed by the **Named Insured** in respect of its acquisition or purchase of another contract or business; and

(ii) would be ordinarily covered under this **Policy**; and

(c) **We** shall not be liable for any **Claim** or loss which arises directly or indirectly from, or in connection with, work performed by any contractor or sub-contractor in relation to such specified, novated contract except for **Your** vicarious liability for such work.

#### 4. Proportionate Liability Waiver

**We** agree that General Exclusion 3. Assumed Liability, will not apply to a liability which **You** have assumed under a contract by reason of having contracted out of the operation of relevant and applicable **Proportionate Liability Legislation**.

#### 5. Mitigation Costs

**We** will cover **You** for **Mitigation Costs**, provided that:

- (a) **You** give **Us** written notice as soon as reasonably practicable:
  - i. on discovering that **Mitigation Costs** may be incurred; and
  - ii. of **Your** intention to incur such **Mitigation Costs**;
- (b) the onus (including associated costs and expenses) of proving entitlement to indemnity under this extension will be borne by **You**; and
- (c) **Our** total liability under this Optional Extension will not exceed the sub-limit specified in the **Schedule** for **Mitigation Costs**.

#### ADDITIONAL BENEFITS - 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. 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 \$250 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**.

This coverage does not extend to **Your** consultants, locums or (sub)contractors

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

##### 2. Emergency Defence Costs

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 **Emergency Defence Costs Sub Limit** stated in the **Schedule** for all such fees, costs and expenses incurred during the **Policy Period**.

##### 3. Investigation Expenses

**We** will cover **You** for **Investigation Expenses** incurred within the **Policy Period** provided that:

- (a) A **Deductible** of \$5,000 will apply to this additional benefit;
- (b) Our liability for all claims made under this additional benefit shall not exceed, in the aggregate, the Investigations Expenses Sub Limit shown in the **Schedule**;
- (c) **You** agree to repay any **Investigation Expenses** where, as a result of the investigation, there has been a finding of criminal conduct on **Your** part;

##### 4. Public Relations Expenses

**We** will pay the reasonable fees, costs and expenses of any public relations consultant engaged by **You** for the sole purpose of protecting **Your** reputation that has been brought into question as a direct result of **Your** conduct of the **Professional Business** which has led, or could reasonably be expected to lead, to a **Claim** against **You**, 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** have given written consent, which will not be unreasonably withheld, to the appointment of the public relations consultant;
- (c) **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**.
- (d) No **Deductible** shall apply to this additional benefit.

##### 5. Claims Preparation Costs

**We** will cover **You** for the reasonable and necessary costs incurred with **Our** prior written consent, for the preparation of a claim which is covered under this **Policy**.

The most **We** will pay for this benefit is the amount set out in the **Schedule** for "Claims Preparation Costs".

#### ADDITIONAL BENEFITS

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

##### 6. Acquisitions and Mergers

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:

- (a) **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
- (b) The newly acquired, created or merged entity provides the same type of professional services as **Your Professional Business**.

**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.

Notwithstanding the 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, or other entity created by, acquired by or merged with the **Named Insured**.

## 7. Consultants, Contractors and Sub-Contractors

**We** will cover **You** for any **Claim** first made against **You** and notified to **Us** in writing during the **Policy Period** for work performed or services provided on **Your** behalf by **Your** consultants, contractors and sub-contractors in the conduct of **Your Professional Business**.

However, no cover is provided to those consultants, contractors or sub-contractors.

## 8. Consumer Protection Legislation

**We** will cover **You** for any **Claim** first made against **You** and notified to **Us** in writing during the **Policy Period** for any unintentional breach of the *Competition and Consumer Act 2010 (Cth)*, or any of the fair-trading legislation enacted for consumer protection within any Australian jurisdiction.

However, this **Policy** does not cover any **Claim** (including **Defence Costs**):

1. arising out of or happening through deliberate or fraudulent conduct which is established by **Your** admission, or by any final, non-appealable adjudication or judgment; or
2. made pursuant to the penalty or criminal provisions of such legislation.

## 9. Continuity

Notwithstanding Special Exclusion 9 of this Section, Known Claims or Circumstances 1.a.a.9, 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 **Professional Business** which arises from a fact or circumstance known by **You** prior to the commencement of the **Policy Period**; and
2. **We** were **Your** professional indemnity 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** professional indemnity 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.

## 10. Defamation

**We** will cover **You** for any **Claim** first made against **You** and notified to **Us** in writing during the **Policy Period** for defamation by reason of words written or spoken in connection with **Your** conduct of the **Professional Business**.

## 11. Dishonesty of Employees

Notwithstanding General Exclusion 8. Dishonesty, **We** will cover **You** for any **Claim** first made against **You** and notified to **Us** in writing during the **Policy Period**, which is brought about or contributed to by the dishonest, fraudulent, criminal, reckless or malicious act or omission of **Your Employee**.

However, **We** will not cover:

1. any person committing or condoning such dishonest, fraudulent, criminal, reckless or malicious act; and
2. any **Claim** arising from or in any way connected to loss of money, negotiable instruments, shares, bonds coupons, stamps or any virtual currency.

## 12. Intellectual Property Rights

**We** will cover **You** for any **Claim** first made against **You** and notified to **Us** in writing during the **Policy Period** for **Civil Liability** arising from an unintentional breach, or infringement of trademarks, trade secrets, patents, copyright, registered designs or the system or programs of others committed in **Your** conduct of the **Professional Business**.

However, no indemnity will be afforded to any **Insured** who intentionally commits, assists or condones such conduct.

## 13. Joint Venture Liability

**We** will cover **You** for **Your** own proportion of liability arising from **Your** conduct of the **Professional Business** as a partner in any joint venture which was disclosed to **Us** and is specified in the **Schedule** 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.

#### 14. Loss of Documents

**We** will cover **You** for damage to or loss or destruction of any **Documents** within the **Policy Period**, provided that:

1. **You** must, as soon as reasonably practicable after discovery, give **Us** written notice of any **Documents** which have been destroyed, damaged, lost or mislaid and after a reasonable search, cannot be found;
2. the amount claimed shall be supported by invoices or accounts to be assessed by a competent person to be nominated by **Us** with **Your** approval, but failing approval, a competent person will be appointed by the Resolution Institute;
3. there is no cover for loss, damage or destruction arising from or connected with wear and tear, vermin, mould or mildew or any other gradual operating cause;
4. **We** will not cover **You** for any liability, costs or expenses which are covered under any other part of this **Policy**.
5. **You** shall do all things reasonably necessary to permit **Us** to exercise our right of subrogation against any other person(s) for the recovery of **Documents** or any such loss;
6. No **Deductible** will apply to the cover provided under this additional benefit.

#### 15. Principals Indemnity

To the extent that it is contractually required, **We** will indemnify **You** for any **Claim** (other than by any **Insured**) first made against the **Principal** and notified to **Us** during the **Policy Period** arising from a breach of professional duty in **Your** conduct of the **Professional Business**.

#### 16. Run-Off Cover

In the event of a **Change of Control** or if the **Named Insured** ceases to exist or carry on the **Professional 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 **Civil Liability** arising from the conduct of the **Professional Business** occurring prior to the date of the **Change of Control** or cessation.

#### 17. Spouse Liability

**We** will indemnify **Your Spouse** where any **Claim** against **You** which is covered under this **Policy**, is also made against **Your Spouse** solely by reason of:

1. his or her status as **Your Spouse**;
2. his or her ownership or other interest in property which is the object of the remedy sought by the person making the **Claim**.

#### SPECIAL EXCLUSIONS TO SECTION 1

The following Exclusions apply only to Section 1. The Exclusions applicable to all Sections of the **Policy** also apply to Section 1.

**We** will not provide cover under this **Policy** for any liability caused by or arising directly or indirectly out of, or in connection with:

##### 1. Bodily Injury and Property Damage

**Bodily Injury** or **Property Damage**, (including any consequential claim for apportionment, contribution or indemnity in connection with any **Bodily Injury** or **Property Damage**) except to the extent:

1. that the **Bodily Injury** or **Property Damage** arises out of any advice, design, specification, or formula devised by the **Insured** in connection with the **Professional Business**; or
2. that **Property Damage** is covered under additional benefit Loss of Documents.

##### 2. Building or Construction Work

any building or construction work, manufacturing, installation, assembly, alteration, demolition, disassembly performed by the **Insured** or on their behalf, except to the extent that **Claim** arises out of any advice, design, specification, or formula devised by the **Insured** in connection with the **Professional Business**

##### 3. Cost Estimates

any estimate of construction cost or cost estimate being exceeded, unless such estimate was made by a qualified Quantity Surveyor, Engineer or Architect.

##### 4. Cladding

**We** will not provide cover under this **Policy** for any liability caused by or arising directly or indirectly out of, or in connection with any advice, design, material specification, material selection, fabrication, installation, application, erection, construction, use, approval or certification of or relating to any **Cladding System** that is not compliant with, or does not conform with, or is installed, applied or used in a manner that does not comply with all relevant provisions of:

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

For the purposes of this endorsement, the term **Cladding System** means any external:

- (i) insulation and finishing system;
- (ii) wall-panelling; or
- (iii) cladding or façade material.

##### 5. Directors' and Officers' Liability

the actual or alleged breach by any natural person insured by this **Policy** of a duty owed solely in that person's capacity as a director or officer of any body corporate.

##### 6. Financial, Legal and Other Advice

1. financial or investment advice;

2. legal services or advice;

#### **7. Insolvency of the Insured**

the administration, receivership, insolvency, bankruptcy or liquidation of the Insured.

#### **8. Intellectual Property**

any infringement of copyright, trademark, trade secrets, registered design or patent, or any plagiarism, or breach of confidentiality, or breach of or infringement of privacy except to the extent covered under Additional Benefit 13. Intellectual Property Rights.

#### **9. 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.

#### **10. Repayment of Fees**

1. the repayment or refund of any monies charged by **You** as fees, or other remuneration, or disbursements; or
2. costs incurred in relation to any dispute regarding the above; or
3. that portion of any judgment, settlement or award corresponding or calculated by reference to such fees or other remuneration, or disbursements; or
4. improper fees or commissions the actual or alleged charging of excessive, undisclosed or otherwise improper fees costs or other amounts charged by **You**.

#### **11. Retroactive Date**

any conduct in the course of the **Professional Business** which happened before the **Retroactive Date**.

#### **12. Statutory Liability**

any **Statutory Liability**

#### **13. Trading Debts**

any trading debt incurred by **You**.

## **SECTION 2 – PUBLIC LIABILITY**

Public Liability is not covered by this policy

## SECTION 3 – CYBER

The cover under Section 3 of this **Policy** 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

**We** will cover **You**, up to the **Limit of Liability** shown in the Schedule for Section 2 against:

1. any **Claim** made against **You** for a **Data Security Breach**; and
2. any **Claim** made against **You** for a **Client Network Infection**; and
3. loss of **Funds** as a result of **Cyber Crime**;

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 shall not apply to this Section.

### SPECIFIC DEFINITION APPLICABLE TO SECTION 3

Solely in respect of Section 3 – Cyber, 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.

### SPECIFIC CONDITIONS APPLICABLE TO SECTION 3

In addition to the General Conditions applying to all Sections, the following conditions apply to Section 3:

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 3, **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 3, 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 3

In addition to the general exclusions applying to all Sections, under Section 3 **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.

nor any **Claim** resulting directly or indirectly out of, or in connection with:

6. failure to follow Specific Condition 1 to Section 3.
7. 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;
8. **Your** actual or alleged intentional transmittal of a **Computer Virus** or other electronic infection;
9. 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**;
10. the costs of restoring, re-collecting, repairing or replacing **Electronic Data**.
11. war, riot, civil commotion, insurrection, or usurpation of governmental power;
12. any governmental authority seizing or gaining access to **Your** computer or **Computer Network**;
13. 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
14. any **Claim, Damages** or **Defence Costs** for which **You** are entitled to an indemnity under any other part of this **Policy**.