

COMBINED LIABILITY WORDING

ABOUT STEADFAST

Steadfast Group, established in 1996, is the largest general insurance broker network and largest group of underwriting agencies in Australasia. Steadfast supports more than 1,800 broker offices across Australia, New Zealand, Asia and Europe.

Steadfast Group also operates as a co-owner and consolidator through its equity interests in a number of broker businesses, underwriting agencies and other complementary businesses - this includes an equity stake in unison Steadfast, a global general insurance broker network with over 200 brokers in 130 countries. Steadfast, the strength You need.

This Policy is available exclusively to You through a Steadfast broker. Steadfast does not issue, guarantee or underwrite this Policy.

IMPORTANT INFORMATION ABOUT STEADFAST'S ADVICE

Any advice Steadfast gives about this Policy does not take into account any of Your particular objectives, financial situation or needs. For this reason, before You act on Steadfast's advice, You should consider the appropriateness of the advice taking into account Your own objectives, financial situation and needs. Before You make any decisions about whether to acquire this Policy We recommend You read this Policy.

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ABOUT THIS BOOKLET

This booklet contains two separate parts: Important Information and Policy Terms and Conditions.

Important Information

This part of the booklet contains information You need to know before You take out an insurance Policy. Please read it carefully before taking out this insurance.

Policy Terms and Conditions

The Policy Terms and Conditions part of this booklet contains the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You, along with any Endorsement or other document We tell You forms part of the Policy, form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your Steadfast broker.

IMPORTANT INFORMATION

ABOUT HUTCH UNDERWRITING

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 behalf of certain underwriters at Lloyds, 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: 02 9068 1390

Email: help@hutchunderwriting.com.au

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

ABOUT THE INSURER(S)

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.

General Insurance Code of Practice

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

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

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

Our Contract with You

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide. The Policy consists of:

- the Policy Terms and Conditions part of this booklet, which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the Proposal, which is the information You provide to Us when applying for insurance cover
- Your most current Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy;
- any Endorsement; and
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

These documents should be read together as they jointly form the contract of insurance between You and Us.

Your 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

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, 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.

Privacy Statement

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.

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

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

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

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

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

The Privacy Officer

Hutch

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

Telephone: 1 300 256 056

e-mail: help@hutchunderwriting.com.au

Our Privacy Policy can be found online at hutchunderwriting.com.au/privacy

Complaints and Dispute Resolution Process

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

Please contact Hutch Underwriting Pty Ltd in the first instance:

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

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

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

Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: PO Box R1745
Royal Exchange NSW 1225

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

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

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

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

Service of Suit

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

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

Post: PO Box R1745
Royal Exchange NSW 1225

Email: serviceofsuitaus@lloyds.com

who has authority to accept service on the Underwriters' behalf;

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

The Claims Manager

Telephone Number: 1300 900 216

Email: claims@hutchunderwriting.com.au

Confirmation of Transactions

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

How Claims Are Dealt With

We 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

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.

Liability Assumed by You under an Agreement

It is not possible for You to transfer to Us the entire spectrum of legal liabilities which You may be compelled to bear under the terms of a wide variety of indemnity and/or hold harmless clauses frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by You under an agreement is covered only to the extent described in the Policy.

Claims Made and Notified Basis of Cover

Section 1 of this Policy is issued on a "Claims made and notified" basis.

This means that the Insuring Clauses respond to:

- (a) Claims first made against You during the Period of Insurance and notified to the Insurer(s) during the Period of Insurance, provided that You were not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in Your position on notice that a Claim may be made against him/her; and
- (b) written notification of facts pursuant to Section 40(3) of the *Insurance Contracts Act 1984* (Cth). The facts that You may decide to notify are those which might give rise to a Claim against You. Such notification must be given as soon as reasonably practicable after You become aware of the facts and prior to the time at which the Policy expires. If You give written notification of facts the Policy will respond even though a Claim arising from those facts is made against You after the Policy has expired. For Your information, Section 40(3) of the *Insurance Contracts Act 1984* (Cth) is set out below:

“S40(3) Where the Insured gave notice in writing to the Insurer(s) of facts that might give rise to Claim against the Insured as soon as was reasonably practicable after the Insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer(s) are not relieved of liability under the contract in respect of the Claim when made by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.”

When the Period of Insurance expires, no new notification of Claims or facts can be made on the expired policy even though the event giving rise to the Claim against You may have occurred during the Period of Insurance.

Goods and Services Tax

The Premium is the amount You pay Us for this insurance and it includes stamp duty, Goods and Services Tax ('GST'), other government charges and any fire services levy that applies.

You must tell Us about the input tax credit ('ITC') You are entitled to on Your Premium and Your Claim, each time You make a Claim. If You do not give Us this information or if You tell Us an incorrect ITC, We will not pay any GST liability You incur.

We will reduce the GST amount We pay by the amount of any ITC to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the ITC may be claimable through Your Business Activity Statement ('BAS').

The Indemnity Limit and any sub-limits applicable to the Policy and any endorsement attaching to the Policy are exclusive of GST.

You must advise Us of Your correct Australian Business Number & Taxable Percentage.

The above taxation information is only a guide. Your individual circumstances will be important to and may affect the tax treatment of any Premiums You pay or the payment for Claims. You should consult Your tax adviser regarding Your individual circumstances.

1. POLICY TERMS AND CONDITIONS

Our Agreement

Subject to all of the terms, conditions and exclusions contained in the Policy and Your payment of or agreement to pay the Premium:

- (a) We will provide You with the cover shown in the Sections of the Policy which are shown as covered in the Schedule;
- (b) the insurance cover is in force for the Period of Insurance set out in the Schedule;
- (c) We will cover You to the extent described in the Policy.

We will not pay more than the Limit of Liability or Indemnity Limit which is shown in the Schedule or as provided in the Policy.

2. SECTION 1 – PROFESSIONAL INDEMNITY

INSURING CLAUSES

2.1 CIVIL LIABILITY INSURING CLAUSE

We agree to indemnify You up to the Indemnity Limit for any Claim (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) first made against You during the Period of Insurance and notified to Us during the Period of Insurance in respect of civil liability incurred or alleged to have been incurred in the conduct of the professional activities and duties of the Professional Business.

2.2 COSTS AND EXPENSES INSURING CLAUSE

We agree to pay Costs and Expenses in addition to the Indemnity Limit in respect of any Claim indemnified by this Policy (unless the Schedule states that Costs and Expenses are included in the aggregate limit).

If We elect not to take over and conduct, in Your name, the defence or settlement of a Claim, We agree to pay Costs and Expenses within a reasonable time frame following Our receipt of invoices specifying such Costs and Expenses and prior to determining Your entitlement to indemnity for the Claim.

In determining Your entitlement to indemnity under this Policy in respect of a Claim, We agree that We will not rely on Exclusion 4.4 Fraud, Dishonesty or Intentional Acts unless and until:

- (a) the Insured makes an admission in writing of any conduct described in Exclusion 4.4 Fraud, Dishonesty or Intentional Acts; or
- (b) it has been established through a judicial process that the Insured has committed any conduct described in Exclusion 4.4 Fraud, Dishonesty or Intentional Acts.

The payment of any Costs and Expenses is subject to the following conditions:

- (i) the payment of any Costs and Expenses to You by Us does not constitute an acceptance by Us of the Insured's right to indemnity for any Claim;
- (ii) if either 2.2(a) or 2.2(b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, We may cease to pay Costs and Expenses to the Insured, unless We, having regard to Your interests, acting reasonably and at Our discretion, decide to continue to pay Costs and Expenses resulting from such Claim;

- (iii) where either 2.2(a) or 2.2(b) above applies or for any other reason it is determined that a Claim is not covered by this Policy, the Insured will refund Costs and Expenses paid by Us, unless We agree in writing to waive recovery of such Costs and Expenses.

2.3 INDEMNITY LIMIT

Subject to Clause 2.2 COSTS AND EXPENSES INSURING CLAUSE and 6.1 Additional Benefit - Claims Preparation Costs Our total liability under Section 1 of this Policy in any one Period of Insurance for any one Claim and in the aggregate (unless the Schedule states that Costs and Expenses are included in the aggregate limit) shall not exceed the Indemnity Limit.

2.4 INSURING CLAUSES CLARIFICATION

For the avoidance of doubt, the indemnity for civil liability provided by Insuring Clauses 2.1 CIVIL LIABILITY INSURING CLAUSE and 2.2 COSTS AND EXPENSES INSURING CLAUSE includes the following:

- (a) breach of a contract for the provision of professional services;
- (b) breach of fiduciary duty;
- (c) breach of warranty of authority committed, by or on behalf of the Insured, in good faith and in the belief that appropriate authority was held;
- (d) any unintentional infringement of copyright, moral right (under the *Copyright Act 1968* (Cth)), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality;
- (e) defamation;
- (f) under the terms of the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 1987* (NSW), the *Fair Trading Act 1985* (VIC) or similar legislation enacted by the other states or territories of the Commonwealth

Section 1 Retroactive Date

2.5 UNLIMITED RETROACTIVE COVER

If no Retroactive date is specified in the Schedule or if the Retroactive date is specified in the Schedule as “Unlimited”, this Policy shall provide indemnity in respect of Claim(s) covered by 2.1 Civil Liability Insuring Clause and 2.2 Costs and Expenses Insuring Clause arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).

2.6 LIMITED RETROACTIVE COVER

Where a Retroactive date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claim(s) covered by 2.1 Civil Liability Insuring Clause and 2.2 Costs and Expenses Insuring Clause arising from acts, errors or omissions committed or alleged to have been committed on or after the Retroactive date.

Automatic Extensions to Section 1

2.7 PREAMBLE

We shall provide indemnity as is available under – Automatic Extensions to Section 1, for nil additional Premium, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, and other terms of this Policy (unless otherwise expressly stated herein); and
- (b) the inclusion of any Automatic Extension shall not increase the Indemnity Limit.

2.7.1 Consultants, Sub-Contractors and Agents

The conduct of the professional activities and duties of the Professional Business shall be deemed to include, acts, errors or omissions of consultants, sub-contractors or agents of the Named Insured, while undertaking work in connection with the conduct of the professional activities and duties of the Professional Business and for which the Named Insured is liable.

No cover is provided for any consultants', sub-contractors' or agents' own liability.

2.7.2 Continuous Cover

We agree to indemnify the Insured for any Claim, covered by Insuring Clauses 2.1 Civil Liability and 2.2 Costs and Expenses above, arising from any Known Circumstance (notwithstanding Exclusion 4.8 Prior or Pending Claims) if:

- (a) We were the professional liability insurer of the Insured when the Insured first knew of such Known Circumstance; and
- (b) We continued without interruption to be the Insured's professional liability insurer up until this came into effect; and
- (c) had We been notified by the Insured of the Known Circumstance when the Insured first knew of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy.

PROVIDED ALWAYS THAT:

- (i) the Insured agrees that it will not seek indemnity from Us in respect of the Claim or any Claim arising out of the Known Circumstance under any other policy issued by Us; and
- (ii) We may reduce the amount We pay out under this provision by the amount of any prejudice We may suffer in consequence of any delayed notification to Us; and
- (iii) the limit of Our liability provided under this Automatic Extension is the lesser of the limit of Our liability under the terms of the policy in force at the earlier time referred to in paragraph 2.7.2(c) above, or the Indemnity Limit under this Policy. The terms of this Policy otherwise apply.

2.7.3 Court Attendance Costs

For any person described in 2.7.3(a) or 2.7.3(b) below who actually attends court as a witness in connection with a Claim notified under and covered by this Policy, it is agreed that Costs

and Expenses will include the following rates per day on which attendance in court has been required:

- (a) for any person who was or is a principal, partner or director of the Named Insured: \$500;
- (b) for any person who was or is an Employee of the Named Insured: \$250.

No Deductible shall apply to this Automatic Extension.

2.7.4 Estates And Legal Representatives

We agree to include in the definition of the You (Definition 8.47 You, Your, the Insured) the estate, heirs, legal representatives or assigns of any Insured in the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of such Insured in respect of any civil liability of the Insured that would have been covered by Insuring Clauses 2.1 Civil Liability and/or 2.2 Costs and Expenses if the Insured was alive, had capacity or was not insolvent or bankrupt. PROVIDED ALWAYS THAT such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

2.7.5 Civil Penalties

Notwithstanding Exclusion 7.9 Fines and Penalties, We agree to indemnify the Insured against Claim compensatory civil penalties imposed by law. Our total liability for the payment of compensatory civil penalties during any one Period of Insurance shall not exceed \$250,000 in the aggregate, which amount shall form part of and not increase the Indemnity Limit.

PROVIDED ALWAYS THAT We will not be liable to indemnify the Insured for any compensatory civil penalty:

- (a) for which We are legally prohibited from indemnifying the Insured under Australian law;
- (b) based upon, attributable to or in consequence of any:
 - (i) willful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
 - (ii) recklessness; or
 - (iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

2.7.6 Fraud, Dishonesty or Intentional Acts

We agree to indemnify the Insured against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from the Insured) arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 4.4 Fraud, Dishonesty or Intentional Acts.

PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Exclusion 4.4 Fraud, Dishonesty or Intentional Acts;

- (b) such indemnity shall not apply to any Claim against any Insured directly or indirectly based upon, attributable to, or in consequence of:
 - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes; or
 - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
 - (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph 2.7.6(b) delivered, negotiated or assigned or an electronic record of such a right.

2.7.7 Joint Venture

If the name of a Joint Venture is included in the Schedule under "Joint Ventures", then, We will indemnify the Insured for the Insured's joint and individual civil liability, arising out of the conduct of the professional activities and duties of such Joint Venture.

If the name of the Joint Venture is not included in the Schedule under "Joint Ventures", then, We will indemnify the Insured only for the Insured's individual civil liability and not for the Insured's joint civil liability arising out of the conduct of the professional activities and duties of such Joint Venture.

PROVIDED ALWAYS THAT the business of such Joint Venture is the same as the Professional Business (as defined in Definition 8.34 Professional Business).

2.7.8 Loss of Documents

We agree to indemnify the Insured in respect of loss of any Documents which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found.

PROVIDED ALWAYS THAT such loss of Documents:

- (a) was first discovered by the Insured during the Period of Insurance and was notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by Us and agreed to by the Insured; and
- (c) shall be limited to the loss of any Documents:
 - (i) which were in the physical custody or control of the Insured or any person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of the Professional Business; or
 - (ii) occurred whilst such Documents were in transit solely in connection with the Professional Business.

No indemnity shall be provided for any loss to Documents arising from normal wear and tear and other gradually operating causes.

2.7.9 Newly Created or Acquired Subsidiary

We agree to include in the definition of Insured (Definition 8.47 "You, Your, the Insured") any Subsidiary created or acquired by the Named Insured during the Period of Insurance for a period of up to thirty (30) days (but not beyond the expiry date of the Period of Insurance) from the date of such creation or acquisition.

PROVIDED ALWAYS THAT:

- (a) this Automatic Extension will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation or acquisition of the Subsidiary; and
- (b) the business of such Subsidiary is the same as or substantially similar to the professional activities and duties of the Professional Business (as defined in Definition 8.34 Professional Business).

The Insured may apply to Us, within such thirty (30) day period, to vary this Policy to continue the cover provided by this Automatic Extension until the expiry date of the Period of Insurance. The Insured shall supply Us with such additional information relating to the new Subsidiary and pay any reasonable additional Premium as may be required by Us.

This clause shall not extend cover to any Subsidiary created or acquired by the Named Insured that is domiciled or incorporated in the United States of America or its territories or protectorates.

2.7.10 Investigation Costs and Expenses

We agree to pay Investigation Costs and Expenses. PROVIDED ALWAYS THAT:

- (a) We shall be entitled, at Our discretion having regard to the interests of the Insured, to appoint legal representation to represent the Insured in the investigation, examination or enquiry; and
- (b) the notice of intended investigation, examination or enquiry is served upon the Insured during the Period of Insurance and is notified to Us during the same Period of Insurance; and
- (c) in the event that a Claim for payment of Investigation Costs and Expenses is withdrawn or indemnity under this Automatic Extension is subsequently withdrawn or denied, We shall cease to advance Investigation Costs and Expenses and the Insured shall refund any Investigation Costs and Expenses advanced by Us to the extent that the Insured was not entitled to such Investigation Costs and Expenses, unless We agree in writing to waive recovery of such Investigation Costs and Expenses; and
- (d) Our total liability in respect of Investigation Costs and Expenses for all Claims made under this Automatic Extension shall not exceed \$250,000.

For the purpose of this Automatic Extension, an official investigation, examination or enquiry includes but is not limited to:

- (i) any investigation, examination or enquiry by way of a Royal Commission or Coronial Enquiry, or conducted by a regulatory authority such as the Australian Securities and Investments Commission;
- (ii) any investigation, examination or enquiry conducted by any disciplinary committee of any association, industry or professional body of which the Insured is a member.

We will not provide indemnity in respect of any industry-wide investigation, routine supervision, inspection, compliance or similar reviews of an Insured conducted by any regulatory, self-regulatory, professional, statutory or official body or institution.

2.7.11 Public Relations Expenses

Where the Insured retains the services of a public relations consultant for the sole purpose of protecting the Insured's reputation that has been brought into question as a direct result of a Claim covered by this Policy, We agree to pay any reasonable fees, costs and expenses of such public relations consultant. PROVIDED ALWAYS THAT:

- (a) the Insured notifies Us within twenty-eight (28) days of first becoming aware of the Insured's reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
- (b) We have given prior written consent (which consent shall not unreasonably be withheld) to retain the services of such public relations consultant; and
- (c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed \$50,000.

2.7.12 Run-Off Cover Until Expiry of the Period of Insurance

We agree that in the event that an Insured entity ceased or ceases to exist or operate or be a Subsidiary or became or becomes consolidated with, merged into or acquired by any other entity either before or during the Period of Insurance then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Period of Insurance.

PROVIDED ALWAYS THAT such coverage shall only apply in respect of Claim(s) arising from any act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

2.7.13 Severability

We agree that where any Insured:

- (a) failed to comply with the duty of disclosure contained in the *Insurance Contracts Act 1984* (Cth); or
- (b) made a misrepresentation to Us before this contract of insurance was entered into; or
- (c) fails to comply with any conditions of this Policy;

the right of any other Insured to indemnity under this Policy shall not be prejudiced thereby. PROVIDED ALWAYS THAT this Automatic Extension shall only apply when:

- (i) such other Insured shall be entirely innocent of and has no prior knowledge of any such conduct; and

- (ii) such other Insured shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct.

NOTWITHSTANDING the above, any fact or knowledge possessed by any past or present partner, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to the Named Insured.

2.7.14 Previous Business

We agree to indemnify any principal, partner or director of the Insured for Claims resulting from professional services they performed prior to joining the Insured.

This Automatic Extension will only apply if:

- (a) the professional services were performed in the same profession as the Professional Business of the Insured; and
- (b) there were no more than ten (10) partners or directors in the past business in which the principal, partner or director practiced; and
- (c) the principal, partner or director of the Insured does not have the benefit of cover under any other insurance or indemnity.

Notwithstanding Section 1 - Retroactive Date Clauses 2.5 Unlimited Retroactive Cover and 2.6 Limited Retroactive Cover, the retroactive date for this Automatic Extension is limited to the commencement date of the past business in which the principal, partner or director practiced.

2.7.15 Emergency Costs and Expenses

We agree to pay Costs and Expenses incurred by the Insured prior to obtaining Our consent. PROVIDED ALWAYS THAT:

- (a) Our consent is obtained within thirty (30) days of the first of such Costs and Expenses being incurred; and
- (b) We are only liable to indemnify the Insured for that part of the Insured's liability in respect of each Claim and Costs and Expenses in excess of the Deductible; and
- (c) if We subsequently refuse to pay under the Policy, the Insured must reimburse Us for any Costs and Expenses that We have paid in advance, according to their respective rights and interests.

The sub-limit of liability for all such payments under this Automatic Extension is \$100,000. This sub-limit forms part of, and is not payable in addition to, the Indemnity Limit.

2.7.16 Reinstatement of Indemnity Limit

We agree to increase the Indemnity Limit under this Policy by an amount equal to the Indemnity Limit PROVIDED ALWAYS THAT:

- (a) indemnity under this Policy shall not exceed the Indemnity Limit stated in the Schedule for any one Claim or series of Claims arising from the same acts, errors or omissions; and

- (b) in the aggregate, indemnity shall not exceed an amount equal to the Indemnity Limit in the Aggregate stated in the Schedule stated in the Schedule; and
- (c) the reinstated Indemnity Limit 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 Indemnity Limit.

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

Optional Extensions to Section 1

2.8 PREAMBLE

The following Optional Extensions are not included in the Policy unless shown as included in the Schedule. We shall provide indemnity as is available under each Optional Extension PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein); and
- (b) the inclusion of any Optional Extension shall not increase the Indemnity Limit; and

2.8.1 Fidelity

Notwithstanding Exclusion 4.4 Fraud, Dishonesty or Intentional Acts, We agree to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured or for which the Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured. PROVIDED ALWAYS THAT:

- (a) such loss is first discovered by the Insured during the Period of Insurance and is notified in writing to Us as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned; and
- (c) We shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred; and
- (d) the Insured shall bear the burden of adducing proof to Our reasonable satisfaction to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and We will be under no obligation to provide indemnity to the Insured until such time as We are satisfied that such loss has, in fact, been sustained; and
- (e) all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to

constitute a single loss and a single Deductible shall apply to such loss; and

- (f) Our liability for each loss under this Optional Extension and Our aggregate liability for all losses under this Optional Extension shall not exceed the limit as declared on the Schedule.

2.8.2 Multi-Year Run-Off After Merger, Takeover, Sale, Winding Up of Named Insured

If the Named Insured is subject to a merger, takeover, sale or winding up, then, We agree to extend the Period of Insurance up to seven (7) years immediately following the expiry of the Period of Insurance. PROVIDED ALWAYS THAT:

- (a) this Optional Extension will only apply with respect to any Claim(s) arising from any act, error or omission occurring prior to the effective date of such merger, takeover, sale or winding up; and
- (b) on such terms and conditions, and for such additional Premium as We may reasonably require.

3. SECTION 2 – PUBLIC LIABILITY

INSURING CLAUSES

3.1 What We Cover

We agree (subject to the provisions of the Policy) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- (a) Personal Injury; and/or
- (b) Property Damage; and/or
- (c) Advertising Injury;

happening during the Period of Insurance, within the Geographical Limits, in connection with the Business caused by or arising out of an Occurrence.

3.2 Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, We will:

- (a) defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit are groundless or false;
- (b) pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably withheld):
 - (i) in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; and
 - (ii) in bringing or defending appeals in connection with such claim or suit;
- (c) pay:
 - (i) all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit;

- (ii) pre-judgment interest awarded against You on that part of the judgment payable by Us; and
 - (iii) all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon;
- (d) pay expenses incurred by You for:
- (i) rendering first aid to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law);
 - (ii) temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof; and
- (e) pay all reasonable legal costs incurred by You with Our consent for representation of You at:
- (i) any Coronial Inquest or Inquiry;
 - (ii) any proceedings in any court or tribunal in connection with liability insured against by this Policy;
 - (iii) any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance; and
 - (iv) any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 3.2(e)(iii) and 3.2(e)(iv) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the reasonable charges, expenses and legal costs of such defence incurred with Our written consent.

In all cases where You expect to incur charges, expenses or legal costs that may be covered under this Insuring Clause '3.2 Defence Costs and Supplementary Payments', You must inform us before doing so, so that we can inform you whether we agree the charges, expenses or legal costs are reasonable.

3.3 Limits of Liability and Excess

Subject to Insuring Clause '3.2 Defence Costs and Supplementary Payments' above and Insuring Clause '6.1 Additional Benefit – Claims Preparation Costs' below:

for Public Liability, the Limit of Liability specified in the Schedule for Public Liability represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

4. Exclusions to Section 1 Only

We shall not be liable under Section 1 of this Policy to provide indemnity in respect of any:

4.1 Bodily Injury and Property Damage

Claim arising out of or related to 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:

- (i) 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
- (ii) that Property Damage is covered under Automatic Extension 2.7.8 Loss of Documents.

4.2 Directors' and Officers' Liability or Trustees' Liability

Claim based upon, attributable to, or in consequence of any activities as a trustee, director, secretary or officer unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

4.3 Financial, Legal And Other Advice

Claim arising out of or related to;

- (i) financial or investment advice;
- (ii) legal services or advice;

4.4 Fraud, Dishonesty or Intentional Acts

Claim based upon, attributable to, or in consequence of:

- (a) any dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors or agents; or
- (b) any act or omission of an Insured or their consultants, sub-contractors, or agents with the intention of causing a third party loss, damage or injury or committed with a reckless disregard for the consequences thereof; or
- (c) any willful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors or agents.

PROVIDED ALWAYS THAT this exclusion shall not apply unless and until:

- (i) the Insured makes an admission in writing of any conduct described in Clauses 4.4(a), 4.4(b) and/or 4.4(c) above; or
- (ii) it has been established through a judicial process that the Insured has committed any conduct described in Clauses 4.4(a), 4.4(b) and/or 4.4(c) above

4.5 Insolvency of the Insured

Claim arising out of or related to the administration, receivership, insolvency, bankruptcy or liquidation of the Insured.

4.6 Intellectual Property

Claim arising out of or related to 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.

4.7 Occupier's Liability

Claim based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an Insured.

4.8 Prior or Pending Claims

Claim:

- (a) first made, threatened or intimated against or to the Insured prior to the Period of Insurance; or
- (b) relating to any matter disclosed or notified to Us or any other insurer prior to the Period of Insurance as being a Claim or a Known Circumstance; or
- (c) relating to any litigation that was in progress or pending prior to the Period of Insurance; or
- (d) relating to any fact or Known Circumstance.

4.9 Product Liability

Claim based upon, attributable to, or in consequence of the manufacture, preparation, modification, repair, supply, maintenance or treatment of any goods or products sold, supplied or distributed by the Insured, except where such Claim arises solely and directly from any advice, design or specification prepared by the Insured in the conduct of the professional activities and duties of the Professional Business.

4.10 Related or Associated Entities

Claim arising out of or related to

- (a) other party insured under this Policy, any of Your shareholders/ trustees/unitholders or any Family Member; or
- (b) involving any entity, facility or arrangement of any description which, at the date the Claim is 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,

For the purposes of this exclusion, the following definitions apply:

- (a) Control has the same meaning as the definition provided under Section 50AA of the Corporations Act 2001 (Cth).
- (b) Family Member means:

- (i) an Insured person's spouse, domestic partner or companion; or
- (ii) the parent, sibling, or child of an Insured person or of an Insured person's spouse, domestic partner or companion.

4.11 Trading Debts

Claim directly or indirectly based upon, attributable to, or in consequence of:

- (a) any trading debt incurred by an Insured or any guarantee given by an Insured for a debt; or
- (b) the refund of the Insured's professional fees or charges (by way of damages or otherwise).

4.12 Restrictive Trade Practices

Claim directly or indirectly based upon, attributable to, or in consequence of any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

5. Exclusions Applicable to Section 2 only

The following exclusions apply to Section 2 only of this Policy. If any portion of the exclusions are found to be invalid or unenforceable, the remainder shall remain in full force and effect.

We will not indemnify You for any liability:

5.1 Advertising Injury

for Advertising Injury:

- (a) resulting from statements made at Your direction with knowledge that such statements are false; or
- (b) resulting from failure of performance of a contract, but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract; or
- (c) resulting from any incorrect description of Your Products or services; or
- (d) resulting from any mistake in the advertised price of Your Products or services; or
- (e) failure of Your Products or services to conform with advertised performance, quality, fitness or durability; or
- (f) incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

5.2 Breach of Professional Duty

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

- (a) in respect of Personal Injury and/or Property Damage arising from the rendering of or the failure to render medical assistance by any person engaged or employed by You to provide first aid or other medical services at Your premises; or

arising out of advice or a service which is not given for a fee.

5.3 Damage to Products caused by fault or defect

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to

damage to that part and only that part of such product to which the damage is directly attributable.

5.4 Demolition and contract works

for Property Damage or Bodily Injury arising from any demolition, additions, alterations to or refurbishment of pre-existing buildings or structures.

However, this exclusion 5.4 does not apply to liability arising from work to premises occupied by You subject to Our maximum liability being \$250,000 for each and every Occurrence.

5.5 Defamation

for defamation:

- (a) resulting from statements made prior to the commencement of the Period of Insurance; or
- (b) resulting from statements made at Your direction with knowledge that such statements are false; or
- (c) incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

5.6 Faulty Workmanship

for the cost of performing, completing, correcting or improving any work undertaken by You.

5.7 Loss of Use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- a delay in or lack of performance by You or on Your behalf of any contract or agreement;

5.8 Manual Work

For manual work and/or activities or operations, including;

- the loading and unloading of any Motor Vehicle; or
- any manual or physical labour ;or
- the operation of tools and/or machinery; or
- the supervision by You of any manual work or physical labour.

5.9 Product Liability

any Product Liability, however this exclusion does not apply to Personal Injury or Property Damage caused by food or beverages sold or supplied by You to your employees or visitors for consumption on Your premises or worksite or at events hosted offsite by you , provided that our liability for any one claim or series of claims , and in the aggregate during any one Period of Insurance will not exceed an amount equal to the Limit of liability specified in the Schedule for Public liability

5.10 Product Guarantee

for any Products warranty or guarantee given by You or on Your behalf. However, this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

5.11 Product Recall

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

5.12 Property in Your Care, Custody or Control

for Property Damage to property in Your physical or legal care, custody or control; however this exclusion shall not apply with regard:

- (a) to the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors; or
- (b) to premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises; or
- (c) to:
 - (i) premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business; or
 - (ii) any other property temporarily in Your possession for the purpose of being worked upon; but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work;
- (d) notwithstanding Exclusion '7.1 Aircraft, Watercraft or Vehicle'; to any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your Business; or
- (e) notwithstanding Exclusion '7.5 Contractual Liability', any property (except property that You own) not mentioned in Exclusions 5.12(a) to 5.12(d) above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this General Exclusion 5.12(e) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

Provided that Our liability under Exclusions 5.12(a) to 5.12(d) shall not exceed \$250,000, for any one Occurrence and in the aggregate for all Occurrences during the Policy Period.

5.13 Property owned by You

for Property Damage to property owned by You.

6. Additional Benefits Applicable to both Section 1 and Section 2

6.1 Additional Benefit - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to \$25,000 in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under Insuring Clause “3.2 Defence Costs and Supplementary Payments” and Insuring Clause 2.2 “Costs and Expenses Insuring Clause” above of this Policy.

7. Exclusions Applicable to both Section 1 and Section 2

The following exclusions apply to both Section 1 and Section 2 of this Policy. If any portion of the exclusions are found to be invalid or unenforceable, the remainder shall remain in full force and effect.

We will not cover You for any Claim, Costs and Expenses, or Compensation that you become legally liable to pay, directly or indirectly arising out of:

7.1 Aircraft, Watercraft or Vehicle

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

Provided that this Exclusion shall not apply with regard to claims under Section 2, Public Liability Policy, arising out of:

- (i) Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable; or
- (ii) Watercraft or Hovercraft owned and operated by others and used by You for Business entertainment; or
- (iv) hand propelled or sailing craft not exceeding ten (10) metres in length, whilst such craft is in Australian or New Zealand territorial waters.

7.2 Asbestos

or resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

7.3 Biosecurity Risk, Listed Human Disease, Or Other Infectious Disease Exclusion

caused by or contributed to by or arising from any biosecurity risk or listed human disease or other infectious human disease under the *Biosecurity Act 2015* (Cth) including any subsequent amendments, replacement, re-enactment, successor or equivalent legislation.

7.4 Communicable Disease

Personal Injury arising out of or caused by or in connection with the contraction of, or transmission of any communicable disease.

7.5 Contractual Liability

any obligation or liability assumed by You under any contract, agreement, warranty or guarantee except to the extent that You would have been legally liable in the absence of such contract, agreement, warranty or guarantee provided that this exclusion does not apply to Incidental Contracts.

7.6 Cyber and Data Protection Law Exclusion

or relating to:

- (a) an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System; or
- (b) any partial or total unavailability or failure of any Computer System provided the Computer System is owned or controlled by the Insured or any other party acting on behalf of the Insured in either case; or
- (c) the receipt or transmission of malware, malicious code or similar by the Insured or any other party acting on behalf of the Insured; or
- (d) any failure or interruption of service provided:
 - (i) to the Insured or any other party acting on behalf of the Insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the Insured;
 - (ii) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by the Insured or any other party acting on behalf of the Insured; or
- (e) any actual or alleged breach of Data Protection Law by the Insured or any other party acting on behalf of the Insured.

Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the Insured or any other party acting on behalf of the Insured in this Policy shall not apply to Data

7.7 Employer's Liability

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

7.8 Employment Practices Liability

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the Insured's employees.

7.9 Fines and Penalties

Claim for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law.

7.10 Jurisdictional Limits

any claim or suit:

- a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine, or Belarus; or
- b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine, of Belarus.

7.11 Molestation Sexual Abuse

any sexual assault, abuse or molestation or attempt thereat, committed or alleged to have been committed by You.

7.12. 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

7.13 Pollution

Claim arising from or directly or indirectly attributable to or in consequence of the actual or alleged release or discharge of Pollutants into or upon land, the atmosphere or any water course or body of water.

However, this exclusion will not apply if the pollution results from sudden and accidental release or discharge of Pollutants and is a direct result of an error or omission in design and/or advice and/or specification in the provision of the Professional Business.

7.14 Geographical Limits

attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates, Myanmar (Burma), Cuba, Iran, North Korea, Syria, Venezuela, Russia, Ukraine, or Belarus.

7.15 Radioactivity and Nuclear Hazards

Claim or liability arising from or directly or indirectly attributable to or in connection with any:

- (a) loss or destruction of or damage to any property whatsoever, or any resultant loss or expenses whatsoever; or
 - (a) consequential loss; or
- (b) legal liability of whatsoever nature; directly or indirectly caused by or contributed to by or arising from:
 - (i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

- (ii) the radioactive, toxic, explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof.

Provided that this Exclusion shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

7.16 Silica

any loss or Claim made under this Policy for Personal Injury or Damage to Property which arises directly or indirectly from, or is alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

7.17 Terrorism

- (a) directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
- (b) directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

7.18 War and Civil War

directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, 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.

7.19 War and Cyber Operation exclusion

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

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

Attribution of a Cyber Operation to a State

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

For the purposes of this War and Cyber Operation exclusion:

Computer System means

any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud infrastructure or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility. If there is any inconsistency between definitions of computer system in this exclusion and the Policy, the definition in the Policy shall apply.

Cyber Operation means

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

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

Essential Service means

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

Impacted State means

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

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

State means

a sovereign state.

War means

armed conflict involving physical force:

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

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8. Definitions applicable to both Section 1 and Section 2

The following definitions apply to this Policy. If a word or expression has a special meaning, it begins with a capital letter:

8.1 Act of Terrorism

An Act of Terrorism means an act, including but not limited to the use of force or violence and/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 with the intention of influencing any government and/or putting the public, or any section of the public, in fear.

8.2 Advertising Injury

Advertising Injury means injury arising out of:

- (a) defamation; or
- (b) misleading or deceptive conduct in breach of provisions of consumer protection laws, including the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), state Fair Trading Acts or similar legislation of any country, state or territory; or
- (c) any infringement of copyright or passing off of title or slogan; or
- (d) unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- (e) invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

8.3 Aircraft

Aircraft means any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

8.4 Bodily Injury

Bodily Injury means physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

8.5 Business

Business means the Professional Business as described in the Schedule.

8.6 Claim

Claim means:

- (a) the receipt by the Insured of any written or oral demand for compensation made by a third party against the Insured; or
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, crossclaim, counterclaim or third or similar party notice served upon the Insured which seeks compensatory relief made by a third party against the Insured; or
- (c) for the purpose of Automatic Extension 2.7.8 Loss of Documents only, any losses described in that Clause arising from loss of any Documents; or
- (d) for the purpose of Automatic Extension 2.7.10 Investigation Costs and Expenses only, any attendance by the Insured at an investigation, examination or enquiry

8.7 Compensation

Compensation means monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

8.8 Costs And Expenses

Costs and Expenses shall mean the reasonable legal costs and other expenses (including but not limited to legal counsels' fees and experts' fees) incurred by or on behalf of the Insured with Our prior written consent (which shall not be unreasonably withheld) or by

Us in the investigation, defence or settlement of a Claim, or in bringing or defending appeals in connection with a Claim.

8.9 Computer System

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

8.10 Data

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

8.11 Data Protection Law

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

8.12 Documents

Documents means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument

8.13 Employee

Employee means any person employed under a contract of service or apprenticeship.

8.14 Endorsement

Endorsement means an individual endorsement document that We give You that attaches to and forms part of the Policy. This document varies the terms and conditions of the Policy.

8.15 Public Liability

Public Liability means Your legal liability in respect of Personal Injury and/or Property Damage and/or Advertising Injury happening in connection with the Business and caused by or arising out of an Occurrence other than Products Liability.

8.16 Geographical Limits (for the purposes of Section 2 only)

Geographical Limits means:

- (a) anywhere in the world except North America, Canada and their respective territories and protectorates
- (b) North America Canada and their respective territories and protectorates, but only with respect to:
 - (i) overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, or Canada, but not where they perform manual work in North America;

8.17 Hovercraft

Hovercraft means any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

8.18 Incidental Contracts

Incidental Contracts means:

- (a) any written rental and/or lease and/or hiring agreement and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such property;
- (b) any written licence agreement of real property, other than with respect to any term or condition contained in such licence agreement that requires You to insure such property;
- (c) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- (d) any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings;
- (e) those contracts designated in the Schedule.

8.19 Indemnity Limit

Indemnity Limit means, for the purposes of Section 1 only, the limit of Our liability under this Policy as specified in the Schedule. It is described in more detail in Clause 2.3 Indemnity Limit.

8.20 Investigation Costs and Expenses

“Investigation Costs and Expenses” means reasonable legal costs and other expenses incurred by or on behalf of the Insured with Our prior written consent (such consent not to be unreasonably withheld) or by Us arising out of any attendance by an Insured at or any response by an Insured to any official investigation, examination or enquiry that relates to the Insured’s conduct of the professional activities and duties of the Professional Business.

“Investigation Costs and Expenses” does not include any fine, penalty or order for the payment of monetary compensation.

8.21 Joint Venture

Joint Venture means the entering into of a venture (by whatever name called) which the Named Insured carries on together with any other person, company, corporation, partnership or other entity not otherwise deemed to be an Insured under this Policy.

8.22 Known Circumstance

Known Circumstance means any fact, situation or circumstance which:

- (a) an Insured knew at any time before the Period of Insurance or any relevant amendment or endorsement of the Policy; or
- (b) a reasonable person in the Insured’s professional position would have thought, at any time before this Policy began or before any relevant amendment or endorsement of the Policy; might result in someone making a Claim against the Insured that might be covered by this Policy.

For the purposes of this Definition 8.22 Known Circumstance, Insured does not include

Employee (as defined in Definition 8.13 Employee) or any consultant, sub-contractor or agent (as referred to in Sub-clause 2.7.1).

8.23 Limit(s) of Liability/Sub-limit(s) of Liability

Limit(s) of Liability/Sub-limit(s) of Liability means, for the purpose of section 2 only, the limit(s) and sub-limit(s) of liability shown in the Policy document and the Schedule.

8.24 Named Insured

Named Insured means for the purposes of Section 1 and Section 2:

- (a) the person(s), corporations and/or other organisations specified in the Schedule.

8.25 North America

North America means:

- (a) the United States of America and the Dominion of Canada;
- (b) any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- (c) any country or territory subject to the laws of the United States of America or the Dominion of Canada.

8.26 Occurrence

Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended from Your standpoint.

With respect to Personal Injury and/or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

8.27 Period of Insurance

Period of Insurance means the Period of Insurance specified in the Schedule or any subsequent period for which We have agreed in writing to extend the cover.

8.28 Personal Injury

Personal Injury means:

- (a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- (c) wrongful entry or wrongful eviction;
- (d) defamation or invasion of privacy, unless arising out of Advertising Injury;
- (e) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;
- (f) assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability, such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

8.29 Policy

Policy means:

- (a) the Policy Terms and Conditions part of this booklet;
- (b) the Proposal;
- (c) the Schedule;
- (d) any Endorsement;
- (e) any other document We tell You forms part of the Policy which may vary or modify the above documents.

8.30 Pollutants

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes materials that are intended to be recycled, reconditioned or reclaimed.

8.31 Premium

Premium means the amount(s) shown in the Schedule that is payable by You in respect of the Policy.

8.32 Products

Products means any goods or products manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products.

Provided always that for the purpose of this insurance the term 'Products' shall not be deemed to include:

- (a) food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit; or
- (b) any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection with (a) and (b) shall be regarded as Public Liability claims hereunder.

8.33 Products Liability

Products Liability means Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such Products; but only where such Personal Injury and/or Property Damage after physical possession of such Products has been relinquished to others.

8.34 Professional Business

Professional Business means the business which is conducted by the Named Insured as specified in the Schedule.

If the Named Insured should change its name and there is no other change which materially alters the risk, the Professional Business will continue to be covered by this Policy.

8.35 Property Damage

Property Damage means:

- (a) physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- (b) loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

8.36 Proposal

Proposal means the Proposal document You complete for this insurance that attaches to and forms part of the Policy.

8.37 Schedule

Schedule means the most current Schedule issued by Us that attaches to and forms part of the Policy.

8.38 Senior Counsel

Senior Counsel shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

8.39 Subsidiary

Subsidiary means:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Named Insured specified in the Schedule; or
- (b) any entity over which a Named Insured is in a position to exercise effective direction or control.

8.40 Taxable Percentage

Taxable Percentage mean the Insured's entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that Premium.

8.41 Tool of Trade

Tool of Trade means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

8.42 Vehicle

Vehicle means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

8.43 Watercraft

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

8.44 We, Us, Our, the Insurer(s)

We, Us, Our, the Insurer(s) means certain underwriters at Lloyd's, led by Munich Re Syndicate 457, acting through Hutch Underwriting Pty Limited.

8.45 Worksite

Worksite means any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

8.46 Worker

Worker means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers;

8.47 You, Your, the Insured

You, Your, the Insured means:

- (a) the Named Insured;
- (b) any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;
- (c) any person who is, during the Period of Insurance, an Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured;
- (d) any Subsidiary 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;
- (e) every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business) while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities;

For the purposes of Section 2 only, You, Your, the Insured includes

- (f) every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such;
- (g) the estates, legal representatives, heirs or assigns of:
 - (i) any deceased or insolvent persons; or
 - (ii) persons who are unable to manage their own affairs by reason of mental disorder or incapacity;

who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses (g)(i) and (g)(ii) above;

9. GENERAL CONDITIONS

If You do not comply with the following General Conditions, We may refuse to pay a claim in whole or in part or in some circumstances in accordance with the law, cancel the Policy.

9.1. Adjustment of Premium

If the first Premium or any renewal Premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information relating to estimates provided by You in connection with the calculation of the Premium as We reasonably require as soon as reasonably practicable. The Premium for each Period of Insurance shall thereupon be adjusted based on Our rating principles effective at inception or the last renewal date of the Policy, as appropriate, and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum Premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

9.2. Alteration of Risk

You shall give to Us written notice as soon as practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

- (a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings; or
- (b) any material change in the nature of the business or professional services offered by an Insured.

Where such notice is given and/or where there is any material alteration to the risk We shall be entitled to cancel this Policy in accordance with the *Insurance Contracts Act 1984* (Cth).

9.3 ASSIGNMENT OF INTEREST

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of Us.

9.4 Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

9.5 Breach of Condition or Warranty

Your rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- (a) breach of a condition or warranty without Your knowledge or consent; or
- (b) error in the name or title of any person(s), corporation and/or other organisation which forms part of the General Definition 'You, Your, the Insured'; or

- (c) error in name, description or situation of property; or
- (d) failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and cover under this Policy with respect to any change which substantially varies any material facts or circumstances affecting the risks covered by this Policy shall be subject to payment by You (if requested) of such reasonable additional Premium that We require.

9.6 Cancellation of this Policy

By You

You may cancel the Policy at any time by notifying Us in writing. The cancellation will take effect from 4pm on the day We receive Your written notice of the cancellation or such time as may be otherwise agreed.

By Us

We may cancel this Policy for any of the reasons set out in Section 60 of the *Insurance Contracts Act 1984* (Cth). Such cancellation shall take effect at the earlier of the following times:

- (a) the time when another policy of insurance between You and Us or You and some other insurer, being a policy that is intended by You to replace this Policy, is entered into;
- (b) at 4.00pm on the thirtieth (30th) business day after the date on which notification in writing was given to You.

In the event of cancellation of this Policy by either party, You shall be entitled to a proportionate refund of Premium subject to any minimum Premium that may have been agreed upon between Us and You and less any non-refundable government charges, taxes and levies, provided that no event has occurred where liability arises under the Policy.

If the Premium is subject to adjustment, cancellation will not affect Your obligation to supply Us with such information as is necessary to permit the Premium adjustment to be calculated.

9.7 Cross Liabilities

Section 2 only of this Policy extends to indemnify:

- (a) each of the parties comprising the Named Insured; and
- (b) each of the Insureds hereunder; separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in General Conditions 9.7(a) and 9.7(b) above in respect of claims made by any other of such parties.

Provided always that:

- (i) each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, General Exclusions and General Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued; and
- (ii) in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

9.8 Deductible & Excess

For Section 1 of the Policy:

- (a) In respect of each Claim against the Insured (or each loss or claim incurred by the Insured in respect of clause 6.1 Additional Benefit Claims Preparation Costs, clause 2.7.8 Loss of Documents and clause 2.7.10 Investigation Costs and Expenses) the amount of the Deductible shall be borne by the Insured at their own risk and We shall be liable to indemnify the Insured for that part of any Claim (or any loss or claim) which is in excess of the Deductible.
- (b) In the event of a Claim by the Insured under this Policy, the Insured shall, if directed by Us, pay to Us (or as is directed by Us) the Deductible within fourteen (14) working days. Any delay, failure or refusal by the Insured to pay the Deductible will entitle Us to deduct such amount from any amount(s) required to settle any Claim or judgment, order, or any other payment to be made by Us under this Policy. In the event that a failure or refusal to grant access to monies for any Deductible results in a failure of a settlement or an increase in Costs and Expenses, Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs and Expenses incurred with Our written consent up to the date of such failure, less the Deductible.
- (c) Where We have elected to pay all or part of the Deductible in respect of any Claim (or any loss or claim), the Insured shall, within fourteen (14) working days from the date of such payment, reimburse Us for such payment.
- (d) In respect of any Claim (or any loss or claim) where the amount of the Claim (or any loss or claim) is less than the amount of the Deductible, the Insured shall bear all Costs and Expenses associated therewith unless We shall have agreed to meet such Costs and Expenses pursuant to 2.2 Costs and Expenses Insuring Clause.
- (e) Where the Deductible is expressed in the Schedule to be inclusive of Costs and Expenses then the Insured will pay all Costs and Expenses, up to the amount of the Deductible, incurred by Us pursuant to the engagement of advisers considered necessary by Us to determine the liability of the Insured and to resolve the Claim (or loss or claim).
- (f) Any Costs and Expenses incurred by Us to determine whether We have a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by Us.

For Section 2 of the Policy:

- a) Excess means the first amount of each claim or series of claims arising out of any one Occurrence for which You are responsible. The Excess applicable to this insurance appears in the Schedule.
- b) With respect to Personal Injury to Contracted Employees or Workers an excess of \$25,000 shall apply to each and every Occurrence in respect of Personal Injury to Contracted Employees and/or Workers' Compensation Subrogation Claims inclusive of Defence Costs and Supplementary Payments.
- c) For the purpose of the application of this Excess the term Contracted Employee or Worker means Your employees and any hired contractors or sub-contractors, or any

- employee, contractors or sub-contractors, whilst engaged by You to replace or supplement your workforce thus performing work on Your behalf or for Your benefit.
- d) The term Contracted Employee or Worker does not include occasional maintenance or repair contractors specifically engaged for such occasional maintenance or repair.

9.9 Inspection & Audit

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time after giving reasonable notice to you, during the currency of this Policy, but only with regard to matters which are relevant to this Policy. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any reasonable time after giving reasonable notice to you, during the currency of this Policy and within three (3) years after the final termination of this Policy, but only with regard to matters which are relevant to this Policy.

9.10 Multiple Claims

For the purposes of section 2 only:

- (a) all causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy;
- (b) where a single act, error or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under this Policy.

9.11 Premium Funders

If the Premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the *Insurance Contracts Act 1984* (Cth), We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been provided to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the Premium, less any non-refundable government changes, taxes and levies, applicable to the unexpired Period of Insurance.

9.12 Reasonable Precautions

You must:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound conditions; and
- (b) take reasonable precautions:
 - (i) to prevent Personal Injury and/or Property Damage and/or Advertising Injury; and
 - (ii) to prevent the manufacture, sale or supply of defective Products; and
 - (iii) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

- (c) at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

9.13 Release

Where You are required by contractual agreement to release any government or public or local authority or other Statutory Authority or any landlord from liability in respect of loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding General Condition '9.17 Subrogation and Allocation of the Proceeds of Recoveries' of this Policy, We agree to waive all Our rights of subrogation against any such Authority or landlord in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

9.14 Non-Imputation

Where this insurance is arranged in the joint names of more than one Insured, as described in General Definition 'Named Insured', it is hereby declared and agreed that:

- (a) each Insured shall be covered as if it made its own Proposal for this insurance; and
- (b) any declaration, statement or representation made in any Proposal shall be construed as a separate declaration, statement or representation by each Insured; and
- (c) any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

9.15 Foreign Currency

All amounts referred to in this Policy are in Australian Dollars.

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to You (or some other person or party as directed by You) the indemnity in respect of such award or settlement; subject always to the applicable Limit of Liability.

9.16 Sanctions

Any Claim that 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.

9.17 Subrogation and Allocation of the Proceeds of Recoveries

Subject to General Condition '9.18. Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

Subject to any specific agreement to the contrary, should You incur any legal liability which is not covered by this insurance:

- (a) due to the application of an Excess; and/or
- (b) where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

Subject to any specific written agreement to the contrary, You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

9.18 Subrogation Waiver

Notwithstanding General Condition '9.17. Subrogation and Allocation of the Proceeds of Recoveries' We hereby agree to waive all Our rights of subrogation under this Policy against:

- (a) each of the parties described under General Definition 'You, Your, the Insured';
- (b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

9.19 Policy Interpretation

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court or competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

We have capitalised words with special meaning wherever they appear in the Policy, to show that those words have a particular defined meaning. These words are defined in the General Definitions section of the Policy. Where any word is defined every derivative of that word has a corresponding meaning.

References to the masculine include the feminine, the singular also includes the plural and vice versa.

The headings are included for descriptive purposes only and do not form part of the Policy for the purpose of its construction or interpretation.

Any reference to any legislation in this Policy shall include any subsequent amendments, replacement, re-enactment, successor or equivalent legislation.

9.20 Several Liability

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

The proportion of liability under this contract underwritten by an Insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the

syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

9.21 Service of Suit

The Insurer(s) agree that:

- (a) if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Insurer(s) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (b) any summons, notice or process to be served upon the Insurer(s) may be served upon:
Lloyd's Underwriters' General Representative in Australia
Suite 1603, Level 16, 1 Macquarie Place
Sydney NSW 2000
Phone: (02) 8298 0700 who has authority to accept service on behalf of the Insurer(s);
- (c) if a suit is instituted against any of the Insurer(s), the Insurer(s), including all Underwriters participating in this Insurance, will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance NOTICE should be given as soon as reasonably practicable to

The Claims Manager

Telephone Number: 1300 256 056

Email: claims@hutchunderwriting.com.au

9.22 Australia Terrorism Insurance Act 2003 Notice

The Underwriters and/or Insurer(s) have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 (Cth) ('ATIA') applies.

ATIA and the supporting regulations made under the ATIA deem cover into certain policies and provide that the Terrorism Exclusion to which this insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism

Exclusion to which this insurance is subject applies in full force and effect to any other loss and any act or event that is not a “declared terrorist incident”.

All other terms, conditions, insured coverage and exclusions of this insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters and/or Insurer(s) have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters and/or Insurer(s) will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a “reduction percentage” as defined in ATIA which results in a cap on the Underwriter’s and/or Insurer’s(s) liability for payment for “eligible terrorism losses”.