CGU

PROFESSIONAL INDEMNITY + BROADFORM LIABILITY

INSURANCE POLICY

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Important information

How CGU protects your privacy

We use information provided by **Our** customers to allow **Us** to offer **Our** products and services. This means **We** may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). **We** will collect this information directly from you where possible, but there may be occasions when **We** collect this information from someone else.

We will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give **Us** your information, but this may affect **Our** ability to provide you with insurance cover.

We may share this information with companies within **Our** group, government and law enforcement bodies if required by law and others who provide services to **Us** or on **Our** behalf, some of which may be located outside of Australia.

For more details on how **We** collect, store, use and disclose your information, please read **Our** Privacy Policy located at www.cgu.com.au/privacy. Alternatively, contact **Us** at privacy@cgu.com.au or 13 15 32 and **We** will send you a copy. **We** recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of **Our** products or services, or providing **Us** with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how **We** will deal with your complaint.

General Insurance Code of Practice

We proudly support the General Insurance Code of Practice (Code). The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit **Us** to high standards of service;
- to promote better, more informed relations between **Us** and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

We have adopted and support the Code and are committed to complying with it. Please contact **Us** if you would like more information about the Code or the Code Governance Committee.

Our service commitment

We are proud of **Our** service standards and **We** support the General Insurance Code of Practice. In the event that you are not satisfied with the way in which **We** have dealt with you, as part of **Our** commitment to customer service, **We** have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact **Us** if you have a complaint, including if you are not satisfied with any of the following:

- one of **Our** products;
- **Our** service;
- the service of **Our** authorised representatives, loss adjusters or investigators; or
- **Our** decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to **Our** Internal Dispute Resolution Department.

Further information about **Our** complaint and dispute resolution procedures is available by contacting **Us**.

Intermediary remuneration

We pay remuneration to insurance intermediaries when **We** issue, renew or vary a policy the intermediary has arranged or referred to **Us**. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration **We** may pay your intermediary, you should ask your intermediary.

Interest on unallocated premium

If **We** are unable to issue your insurance when **We** receive your application, **We** are required to hold your premium in a trust account on your behalf until your insurance can be issued.

We will retain any interest payable by **Our** bank to meet, among other things, bank fees and other bank costs **We** incur in operating the account.

Policy 1
Professional Indemnity Insurance

Section 1
How to read this insurance policy

1.1 Words with special meanings

Some of the words in this **Policy** have special meanings. These meanings can be found in Section 9 of the **Policy** (`Words with special meanings'). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Schedule**.

1.2 Policy interpretation

Except where the context otherwise requires it:

a) the singular includes the plural and the plural includes the singular;

b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning; and

c) words importing a gender include every other gender.

1.3 Paragraph headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

1.4 References to legislation

References to legislation in this **Policy** includes any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

Section 2
The insurance contract

2.1 Payment of the premium

We agree to provide the **Cover** described in this **Policy** upon full payment of the **Premium**. If full payment of the **Premium** is not made, there is no **Cover**.

2.2 Proposal

Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured**, in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of that information is wrong or false, it may affect entitlement to **Cover** under this **Policy**.

2.3 Period of insurance

This **Policy** is in force for the **Period of Insurance**.

2.4 Responsibilities and notification of change of material risk

a) The **Policyholder** must as soon as reasonably possible advise **Us** in writing of a material change in the risk, including but not limited to notifying **Us** if any of the following occurs during the **Period of Insurance**:

   i) undertaking activities that are materially different from the **Professional Services**;

   ii) any cancellation, suspension, loss of or condition imposed upon any licence, registration or other authority required by the **Insured** to conduct the **Professional Services**; or

   iii) the **Insured** being insolvent, bankrupt or in liquidation; or

   iv) a **Run-Off Event**.

b) When **We** receive notification of a change, **We** may decide to either:

   i) continue **Cover** with no change to the premium payable;

   ii) reduce the premium payable and return any refund to the **Policyholder**;

   iii) charge the **Policyholder** an additional premium (the **Policyholder** can cancel the **Policy** if the additional premium is not acceptable); or

   iv) cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

c) It is important for the **Policyholder** to know that **We** may make changes to this **Policy** as a result of a change in information. When there is a change, **We** will inform the **Policyholder**.

d) If the **Policyholder** does not notify **Us** of a material change, **We** may refuse to pay a **Claim** or **Covered Claim** or reduce **Cover** under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

e) The course of action **We** take when the **Policyholder** fails to notify **Us** of a material change will be considered in each circumstance based on what impact or effect the **Policyholder's** failure to do so caused or contributed to the **Claim** or **Covered Claim** or changes **Our** liability under the **Policy**.

Section 3
The cover we provide

The provisions of Section 3 apply to all Sections of this **Policy**, unless otherwise is stated to the contrary.

3.1 Civil liability cover

We Cover the **Insured** up to the **Policy Limit** (see Section 6) in respect of **Claims** for **Civil Liability** to any third party incurred in the provision of the **Professional Services** and which:

a) are first made against the **Insured** during the **Period of Insurance**; and

b) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and

c) arise from an act, error or omission on or after the 'Retroactive Date' as stated in the **Schedule**.

3.2 Examples of what we cover

By way of example, the **Civil Liability We Cover** in Section 3.1 includes, but is not limited to, the following types of **Claims**:

a) breach of duty (including a fiduciary duty);

b) breach of privacy or confidentiality;

c) defamation;

d) loss of or damage to **Documents** which were in the **Insured's** physical custody or control or for which the **Insured** was legally responsible for, at the time of loss or damage (to the full **Policy Limit**); and

e) infringement of **Intellectual Property**.

3.3 Claim investigation costs

a) In respect of **Covered Claims**, subject to Sections 3.3 b) and 6.3, **We** also pay in addition to the **Policy Limit** (but only up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.

b) In respect of **Covered Claims**:

i) first brought in a court outside Australia or New Zealand; or

ii) brought in a court within Australia or New Zealand to enforce a judgment handed down in a court outside Australia or New Zealand; or

iii) where the proper law of a country other than Australia or New Zealand is applied to any of the issues in any **Claim** or **Covered Claim Covered** by this **Policy**,

the **Policy Limit** is inclusive of **Claim Investigation Costs**.

c) **We** will pay **Claim Investigation Costs** as and when they are incurred prior to final resolution of the **Claim**, however, **We** will only pay such costs if either:

i) **We** incur them; or

ii) the **Policyholder** incurs them after first obtaining **Our** prior written consent (which shall not be unreasonably delayed or withheld) and the costs and expenses are reasonable and necessary.

d) **We** are not obligated to defend, or to continue to defend, any **Claim** or **Covered Claim** or to pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

Section 4
Policy extensions

Subject to all the terms, conditions and exclusions of the **Policy**, **We** agree to extend **Cover** by the following Extensions. These **Policy** Extensions will not increase the **Policy Limit** unless expressly stated otherwise.

4.1 Advancement of claims investigation costs

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

i) **We** have not denied **Cover** under the **Policy** and, if **Cover** is denied, then only up to the point of any denial of **Cover**; and

ii) **Our** written consent (which shall not be unreasonably delayed or withheld) is obtained prior to the **Policyholder** incurring such **Claims Investigation Costs**.

b) The **Insured** on whose behalf or for whose benefit **Claims Investigation Costs** have been paid, shall repay to **Us** all such **Claim Investigation Costs**, in the event and to the extent that:

i) an admission is made by the **Insured** or by any person authorised to make such an admission on behalf of the **Insured**, of any of the conduct as set out in Section 7.11; or

ii) it is subsequently established, directly or indirectly, by judgment or other final adjudication, that conduct as set out in Section 7.11 occurred.

4.2 Enquiries cover

For those **Enquiries** of which the **Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible during the **Period of Insurance** and which arise directly out of the provision of **Professional Services** on or after the 'Retroactive Date' specified in the **Schedule**, **We Cover** the **Insured** (subject to the **Specific Cover Limit** set out in the **Schedule** for 'Enquiries') for the reasonable and necessary legal costs and expenses incurred with **Our** prior written consent (which shall not be unreasonably delayed or withheld) for the representation of the **Insured** at any **Enquiry**. This **Cover** does not extend to paying the **Insured's** regular or overtime wages, salaries or fees.

If no **Specific Cover Limit** is indicated in the **Schedule** for 'Enquiries', then no **Cover** is provided by this **Policy** for **Enquiries**.

4.3 Continuous cover

a) **We Cover** the **Insured**, for any **Claim** or **Enquiry** otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** (notwithstanding Section 7.1 of this **Policy**) if:

i) there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and

ii) **We** were the professional liability insurer of the **Policyholder** when an **Insured** first knew of such **Known Circumstance**; and

iii) **We** continued without interruption to be the **Policyholder's** professional liability insurer until this **Policy** came into effect; and

iv) had **We** been notified of the **Known Circumstance** when the **Insured** first knew of it, the **Insured** would have been covered in respect of the policy in force at that time and the **Insured** would (but for Section 7.1 of this **Policy**) otherwise be **Covered** under this **Policy**; and

v) the **Known Circumstance** has not previously been notified to **Us** or to any other insurer.

b) If the **Insured** was entitled to have given notice of the **Known Circumstance** under any other policy of insurance with any other insurer, then this Extension does not apply to provide **Cover** under this **Policy** to the extent that indemnity is provided to the **Insured** under that other policy of insurance.

c) **Our** liability under this Extension is reduced to the extent of any prejudice **We** suffer as a result of any delayed notification of the **Known Circumstance** to **Us**.

d) The **Policy Limit** of the **Cover We** provide under this **Extension** is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph a) iv) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

4.4 Court attendance costs

a) **We** will pay to the **Policyholder** $500 per day as part of **Claims Investigations Costs** in respect of any **Principal** or **Employee** who is legally required to attend at Court for the purposes of giving evidence as a witness in connection with a **Covered Claim**.

b) No **Excess** shall apply to this Extension.

4.5 Lost documents

a) Where **Cover** is not otherwise provided under Section 3.1 of the **Policy**, **We** will pay the reasonable and necessary costs and expenses of replacing or restoring a third party's **Documents**:

i) for which an **Insured** is legally responsible; and

ii) that have been **Lost** during the **Period of Insurance**; and

iii) where the **Lost Documents** have been the subject of a diligent search by or on behalf of the **Policyholder**; and

iv) which **Loss We** are told about in writing as soon as reasonably possible during the **Period of Insurance**.

b) **We** will only pay such costs and expenses if either:

i) **We** incur them; or

ii) the **Policyholder** incurs them after first obtaining **Our** prior written consent (which shall not be unreasonably delayed or withheld).

c) **We** shall not be liable for any such costs and expenses arising out of wear, tear and/or gradual deterioration, the activity of insects, pests or vermin, or other matters beyond the **Insured's** control.

d) The **Specific Cover Limit** for such costs and expenses is $250,000 any one **Loss** and $500,000 in the aggregate for all such **Losses**.

e) Notwithstanding the **Schedule**, the **Excess** applicable to this Extension is $1,000 for each **Loss**.

4.6 Compensatory civil penalties

a) Notwithstanding Section 7.10 b), **We Cover Claims** for compensatory civil penalties arising from the provision of **Professional Services** that:

i) are first made against the **Insured** during the **Period of Insurance**; and

ii) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and

iii) arise from an act, error or omission on or after the 'Retroactive Date' as specified in the **Schedule**.

b) However, there is no **Cover** under the **Policy** for any compensatory civil penalty:

i) which **We** are legally prohibited from **Covering** the **Insured** against;

ii) based upon, attributable to or in consequence of any:

1. wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
2. gross negligence or recklessness; or
3. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

c) The **Specific Cover Limit** for the payment of compensatory civil penalties under the **Policy** shall not exceed $250,000 in any one **Claim** and $500,000 in the aggregate for all such **Claims**.

d) Subject to Sections 3.3 and 6.3 **We** also pay, in addition to the **Specific Cover Limit** specified in c) above, **Claim Investigation Costs** (but only up to an amount equal to the **Specific Cover Limit**).

4.7 Run-off cover for the policyholder

In the event that a **Run-Off Event** occurs during the **Period of Insurance**:

a) the **Cover** provided by this **Policy** with respect to the **Policyholder** shall continue until the expiry date of this **Policy** only in respect of any **Claim** or **Covered Claim** arising from any act, error or omission prior to the date of the **Run-Off Event**.

b) the **Policyholder** may apply to extend the **Period of Insurance** for run-off cover subject to:

i) the provision of a proposal; and

ii) **Our** written agreement to provide such extension, which is at **Our** absolute discretion; and

iii) the payment of any additional premium required by **Us** that is to be paid in full immediately upon expiry of this **Policy**; and

iv) any additional terms, conditions or exclusions that **We** may impose in respect of such extension.

c) where **We** agree to do so, and at **Our** absolute discretion, the **Period of Insurance** may be extended up to a maximum of 84 months, as may be determined by **Us**, provided that **Our** total liability under the **Policy** for all **Claims** and **Covered Claims** in the aggregate for the **Period of Insurance** and any extended period pursuant to this Extension, shall not exceed the **Policy Limit**.

In the interests of clarity the **Period of Insurance** shall not, in any circumstances, be for a period in total greater than 84 months from the original inception date of the **Policy**.

4.8 Public relations cover

a) **We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by the **Policyholder** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a **Publicity Campaign** approved by **Us**, to prevent or mitigate damage to the reputation of the **Policyholder** in consequence of a **Claim** or **Covered Claim**, arising from the provision of the **Professional Services**.

b) The **Specific Cover Limit** for the payment of such fees, costs and expenses of a public relations consultant is $50,000 for any one **Publicity Campaign** and $100,000 in the aggregate for all **Publicity Campaigns**.

c) Notwithstanding the **Schedule**, the **Excess** applicable to this Extension is $1,000 for each and every **Publicity Campaign**.

4.9 Extended notification period

a) In the event that this **Policy** is not renewed, or is cancelled for any reason other than non-payment of the **Premium**, then the **Policyholder** has until the earlier of the time that the **Policyholder** effects, either with **Us** or any other insurer(s), another insurance policy which covers substantially the same risk as this **Policy**, or a period of 30 days commencing on the day immediately following expiry/cancellation of this **Policy** to notify **Us** of any **Claims** made against the **Insured** during the **Period of Insurance**.

b) **Cover** under this Extension:

i) does not reinstate or increase the **Policy Limit** or extend the **Period of Insurance**; and

ii) will only apply to acts, errors or omissions committed or alleged to have been committed by the **Insured** before the earlier of the end of the **Period of Insurance** or the cancellation date of this **Policy**; and

iii) is limited to **Claims** and **Covered Claims** arising from an act, error or omission which occurred on or after the 'Retroactive Date' specified in the **Schedule**.

4.10 Vicarious liability for agents or consultants

The provision of the **Professional Services** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants engaged by the **Policyholder** to provide **Professional Services** and for which the **Policyholder** is liable. Subject to the definition of **Employee** in Section 9.8, such agents and consultants, however, are not **Covered** by this **Policy**.

4.11 Principal's previous business

a) Notwithstanding Section 7.3 e), **We Cover Principals** of the **Policyholder** in respect of;

i) **Civil Liability**;

ii) arising in their capacity as a principal of a prior professional practice;

iii) in respect of **Claims** arising from the provision, on behalf of the prior professional practice, of **Professional Services** of the type **Covered** under this **Policy**.

b) This **Cover** is only for a maximum of 30 days from the date the principal became a **Principal** of the **Policyholder** (or until the **Policy** expires, if that is sooner).

c) **We** may, at **Our** absolute discretion, agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the prior professional practice.

d) Notwithstanding the **Schedule**, the Retroactive Date for such **Cover** is unlimited.

4.12 Prior corporate entities

We Cover corporate entities, for **Claims** and **Covered Claims** of the type and on the basis specified in this **Policy**, through which the **Policyholder** previously traded, provided that any such corporate entities are still owned and controlled by the **Policyholder**.

4.13 Merged and/or newly acquired subsidiaries

a) **We Cover** entities (practicing in the same professional discipline as the **Policyholder**) which are merged with or acquired by the **Policyholder** during the **Period of Insurance** in respect of **Claims** arising from the provision of **Professional Services** of substantially the same type as those **Covered** by this **Policy**.

b) This **Cover** is only for a maximum of 30 days from the date of the merger or acquisition (or until the **Policy** expires if that is sooner).

c) **We** may, at **Our** absolute discretion, agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity.

d) Notwithstanding the **Schedule**, the Retroactive Date for such **Cover** is deemed to be the date of the merger with or acquisition by the **Policyholder** unless **We** otherwise agree in writing.

4.14 Former subsidiaries run-off cover

a) **We Cover** any former **Subsidiary** of the **Policyholder**, for **Claims** and **Covered Claims** of the type and on the basis specified in this **Policy**, provided that such **Cover** shall only apply in respect of acts, errors or omissions:

   i) occurring in the provision of **Professional Services**; and

   ii) which occurred after the 'Retroactive Date' specified in the **Schedule** and prior to the date on which such **Subsidiary** ceased to be a **Subsidiary** of the **Policyholder**.

b) **We** only provide **Cover** to the former **Subsidiaries** described in this Extension if the persons, firms or incorporated bodies claiming **Cover** each agree in writing within a reasonable time of notification to **Us** of the **Claim** or **Covered Claim**:

   i) to be bound by this **Policy**; and

   ii) to be liable individually, and together with the **Policyholder**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

4.15 Cover to spouse, estates and legal representatives

If an **Insured** dies, becomes legally incompetent or insolvent, **We Cover** the spouse, domestic partner, estate, legal representative or assigns of the **Insured**, to the same extent as **Cover** would otherwise have been available to the **Insured**, but only in respect of their vicarious liability for the **Insured's** acts, errors or omissions.

4.16 Joint venture

a) If the name of the **Joint Venture** is not included in the **Schedule** under 'Joint Ventures', then **We Cover** the **Insured** only for the acts, errors or omissions of the **Insured** arising from the provision of **Professional Services** as otherwise **Covered** by this **Policy**.

b) If the name of a **Joint Venture** is included in the **Schedule**, under 'Joint Ventures', then **We Cover** the **Insured** for the **Insured's** liability in respect of that **Joint Venture** as otherwise **Covered** by this **Policy**.

4.17 Loss mitigation

a) **We Cover** the **Policyholder** for the direct costs and expenses incurred by the **Policyholder**, which are notified to **Us** during the **Period of Insurance** and **We** provide **Our** prior written consent (which shall not be unreasonably withheld or delayed) for taking reasonable and necessary steps to rectify or to mitigate the effects of any act, error or omission of the **Insured** in the provision of **Professional Services** which is first discovered during the **Period of Insurance**, which **We** consider would otherwise result in a **Claim** where such steps were not taken.

b) The **Specific Cover Limit** for the payment of such direct costs and expenses is $100,000 in respect of any steps taken to rectify or to mitigate one matter and $200,000 in the aggregate for all such matters

4.18 Fraud & dishonesty

a) Notwithstanding Section 7.11 of the **Policy**, **We Cover** the **Insured** or any other person entitled to **Cover** under this **Policy** on the basis specified in Section 3 of the **Policy** for any **Claim** or **Covered Claim** which arises from dishonest, fraudulent, criminal or malicious acts or omissions of any person who is an **Insured** or any other person entitled to **Cover** under this **Policy** (but there is no **Cover** for that person's own liability for these **Claims** or **Covered Claims**).

b) When the **Claim** or **Covered Claim** in a) above involves the theft or misappropriation of money relating to payments made by cheque and/or electronic funds transfer, then **We** only provide **Cover** under this Extension if there is a documented procedure in place requiring that:

   i) all cheques are signed by a **Principal** or two authorised people; and

   ii) all electronic fund transfers are authorised by two authorised people.

c) In relation to the **Cover** provided in a) above **We** deduct from any money **We** pay for:

   i) the amount of any money which the **Policyholder** would have paid to the fraudulent, dishonest, criminal or malicious person who is an **Insured** or any other person entitled to **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and

   ii) the amount of any money of, or to which the person referred to in paragraph a) above is entitled, which the **Policyholder** holds or is otherwise entitled to (if **We** can do so by law).

d) The **Policyholder** must take all reasonable precautions to prevent any loss and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen the likelihood of a **Covered Claim** or **Claim Covered** under this Extension arising.

e) Notwithstanding a) above, **We** do not provide **Cover** for any **Claims** or **Covered Claims** directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions which the **Policyholder** knew, or ought reasonably to have known of, or suspected or ought reasonably to have suspected, at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent.

4.19 Misleading or deceptive conduct

Notwithstanding Section 7.11 of this **Policy**, **We Cover** the **Insured** on the basis specified in Section 3 of the **Policy** in respect of breaches of the misleading and deceptive conduct provisions of the Australian Securities and Investments Commission Act 2001 (Cth), the consumer protection provisions of the Competition and Consumer Act 2010 (Cth) and corresponding consumer protection provisions of New Zealand and Australian state and territories Fair Trading legislation and any antecedents to any of this legislation (but not for criminal liability in respect of any such matters).

4.20 Breach of warranty of authority

We Cover the **Insured** on the basis specified in Section 3 the **Policy** for **Claims** that arise from a breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the reasonable belief of the person alleged to have committed the breach that appropriate authority was held.

4.21 Interested party

a) **We Cover** an **Interested Party** on the basis specified in Section 3 of the **Policy**, for any vicarious **Civil Liability** to any third party incurred by the **Interested Party** arising solely and directly from the provision of the **Professional Services** by the **Insured** provided that had such **Civil Liability** been incurred directly by the **Insured**, the **Insured** would have been entitled to **Cover** against that liability under this **Policy**.

b) **We** only provide **Cover** to the **Interested Party** if the **Interested Party** agrees in writing, within a reasonable time of notification of the **Claim** or **Covered Claim** to **Us** to be:

i) bound by this **Policy**; and

ii) liable individually, and together with the **Insured**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to the **Interested Party** under this **Policy**.

Section 5
Optional extensions

The following are Optional Extensions of cover and are subject to all other provisions of the **Policy** unless otherwise is stated to the contrary. If the **Specific Cover Limit** for the relevant Optional Extensions is indicated in the **Schedule** as 'Not Insured', then that Optional Extension is not included in this **Policy**.

The Optional Extensions in this Section use additional defined terms to those used in the **Policy** set out in Section 9. These additional defined terms appear in Sections 5.1.3, 5.2.3 and 5.3.4. Where a defined term in an Optional Extension is identical to one which appears in Section 9 of the **Policy**, the definition used in the Optional Extension applies.

5.1 Cyber cover extension

5.1.1 The cover we provide

a) Privacy breach

i. **We** will pay, on behalf of the **Insured**, all sums which the **Insured** becomes legally obligated to pay (including liability for claimants' costs and expenses) and **Claim Investigation Costs** resulting from any **Claim** first made against the **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance** as a direct result of:

1) Personal information

the breach, by or on behalf of the **Policyholder**, in respect of any natural person, of any **Privacy Obligations**.

2) Commercially confidential information

any actual or alleged unauthorised disclosure, loss or theft of **Commercially Confidential Information**, by or on behalf of the **Policyholder**.

3) Employee information

the breach, by or on behalf of the **Policyholder**, of any **Privacy Obligations** relating to any **Employee** as a direct result of the **Insured's** failure to maintain the confidentiality and/or security of any:

3.1 **Computer Records** pertaining to such **Employee**; and/or

3.2 data or information pertaining to such **Employee** stored on the **Policyholder's Computer Systems**.

4) Information outsourced by the policyholder

any actual or alleged unauthorised disclosure, loss or theft of:

4.1 **Personal Information; or**

4.2 **Commercially Confidential Information**

in the care, custody or control of any **Service Provider** where such information is authorised to be in the care, custody or control of the **Service Provider** by the **Policyholder** pursuant to a written contract.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $200,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Claim**.

b) Systems damage

i. **We** will pay **Rectification Costs** incurred:

1) in retrieving, repairing, restoring or replacing any of the **Policyholder's Computer Records** (or any other **Computer Records** for which the **Policyholder** is responsible) that have been destroyed, damaged, lost, altered, distorted, erased or mislaid (and which, after diligent search, cannot be found);

2) in repairing, restoring or replacing any of the **Policyholder's Computer Systems** that have been destroyed, damaged, lost, altered, distorted, erased or mislaid,

as a direct result of any **Cyber Event** first discovered by an **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance**.

ii. The **Specific Cover Limit** for the cover provided under this Extension is $25,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Claim** for **Rectification Costs**.

The **Insured** should obtain **Our** prior written consent before incurring any **Rectification Costs** to ensure the **Insured** will be able to claim those costs back on the **Policy**. If the **Insured** does not obtain **Our** agreement first, **We** will only pay **Rectification Costs** up to the amount **We** would have agreed to pay had the **Insured** obtained **Our** prior agreement.

c) Computer virus transmission and hacking

i. **We** will pay, on behalf of the **Insured**, all sums which the **Insured** becomes legally obliged to pay (including liability for claimants' costs and expenses) and **Claim Investigation Costs** resulting from any **Claim** first made against the **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance** as a direct result of any **Third Party's** financial losses arising directly from:

1) a **Hacking Attack** or **Virus** that has emanated from or passed through the **Policyholder's Computer Systems**; or

2) a **Hacking Attack** or **Virus** that restricts or prevents access to the **Policyholder's Computer Systems'** by **Third Parties** authorised by the **Insured** to gain such access; or

3) the loss or theft of the **Policyholder's** data or data for which the **Policyholder** is responsible or alleged to be responsible for, arising directly from a **Hacking Attack** or **Virus**.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $200,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Claim**.

d) Multimedia liability

i. **We** will pay, on behalf of the **Insured**, all sums which the **Insured** becomes legally obliged to pay (including liability for claimants' costs and expenses) and **Claim Investigation Costs** resulting from any **Claim,** arising from or directly in connection with the provision of **Professional Services**, first made against the **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance** as a direct result of:

1) libel, slander or defamation;

2) invasion of or interference with the right to privacy, including those of **Employees**, or commercial appropriation of names or likeness;

3) plagiarism, piracy or misappropriation of ideas;

4) infringement of copyright, domain name, commercial title or slogan, the dilution or infringement of trademark, service mark, service name or trade name,

arising directly from:

1) the **Policyholder's Internet and Email Content**; or

2) the **Policyholder's Promotional Materia**l; or

3) **Third Party** digital content downloaded, shared or distributed from the **Policyholder's Computer Systems**.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $200,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Claim**.

e) Cyber extortion cover

i. Notwithstanding Section 5.1.2 p) vi. and vii. of the **Policy**, **We** agree to pay **Cyber Extortion Costs** arising solely from a **Security Threat** first made against the **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance**.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $250,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Security Threat**.

Any **Cyber Extortion Costs** covered under this Section 5.1.1 e) will only be paid in accordance with applicable laws, subject to **Our** reasonable satisfaction that appropriate due diligence has been conducted on behalf of the **Insured** in relation to any payment and will be paid under the direction of, and be subject to, the notification of any relevant criminal enforcement or other authority.

f) Privacy fines & investigations

i. Notwithstanding Section 7.10 b) of the **Policy**, **We** will also pay, to the extent **We** are permitted to do so by law any:

1) **Fine or Penalty** payable by the **Policyholder** as a direct result of a breach by the **Insured** of its **Privacy Obligations**; and/or

2) **Regulatory Investigation Costs** into such breach,

arising from any notice of a **Regulatory Investigation** into an alleged breach by the **Insured** of it's **Privacy Obligations**, which is first received by the **Insured** and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance**.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $250,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every **Regulatory Investigation**.

g) Privacy breach notification & loss mitigation

i. **We** agree to pay **Privacy Breach Costs** incurred as a direct result of a **Cyber Event** which is first discovered, and notified to **Us** in writing as soon as reasonably possible during the **Period of Insurance** where:

1) the **Insured** is legally obligated to take the steps the subject of such **Privacy Breach Costs**; or

2) steps the subject of such **Privacy Breach Costs** will effectively mitigate or avoid a **Claim** which would otherwise be made against the **Insured** and which would be covered under Section 5.1.1 a), Privacy, were such steps the subject of the **Privacy Breach Costs** not taken.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $50,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000 for each and every claim on the **Policy** for **Privacy Breach Costs** cover.

h) Rewards expenses cover

i. **We** agree to pay **Reward Expenses** incurred as a direct result of a **Cyber Event**, which is first discovered, and notified to **Us** in writing as soon as reasonably possible, during the **Period of Insurance**.

ii. The **Specific Cover Limit** for the cover provided by this Extension is $25,000 in the aggregate.

iii. The **Excess** applicable to this Extension is $1,000.

i) Total aggregate specific cover limit

The total aggregate **Specific Cover Limit** with respect to the cover provided in Section 5.1.1 a) to h) inclusive is $250,000.

5.1.2 What is not covered

We do not provide cover for any **Claims**, liabilities, losses, costs, and other matters **Covered** by this Extension:

a) Patent

based upon, directly or indirectly arising from or attributable to the actual or alleged infringement of any patent.

b) Professional services

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

i. the rendering of or failure to render **Professional Services**; or

ii. a breach or alleged breach of any contract for the provision of **Professional Services**.

c) Fraudulent credit and/or debit card transactions

arising as a result of any request from the **Insured's** acquiring bank for funds or the imposing of fines and/or penalties as a result of fraudulent credit or debit card transactions, although this Exclusion shall not apply to any **Claims** covered by Section 5.1.1 a) Privacy.

d) Enforcement order

based upon, directly or indirectly arising from or attributable to any failure to respond to or comply with an **Enforcement Order**.

e) Failure of external networks, cables, or core internet infrastructure servers

in respect of Section 5.1.1 b) Systems Damage only, based upon, directly or indirectly arising from or attributable to any failure of external networks, cables, or core internet infrastructure servers not in the **Policyholder's** direct operational control.

f) Satellite failures, electrical or mechanical failures

based upon, directly or indirectly arising from or attributable to any satellite failures, electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, spike, brownout or blackout, outages to gas, water, telephone, cable, telecommunications, or other infrastructure, unless such infrastructure is under the **Policyholder's** direct operational control and unless such **Claim** is as a direct result of any **Cyber Event.**

g) Bodily injury/property damage

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

i. bodily injury (except emotional distress, mental anguish or humiliation), sickness, disease or death of any person; or

ii. destruction of or damage to tangible property (including the loss of use thereof).

h) Confiscation, commandeering, requisition, destruction of or damage to a computer system

based upon, directly or indirectly arising from or attributable to the confiscation, commandeering, requisition, destruction of or damage to, **Computer Systems** by order of a government de jure or de facto, or by any public authority for any reason.

i) Anti-competitive practices

based upon, directly or indirectly arising from or is attributable to any actual or alleged anti-trust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws, or false, deceptive or misleading advertising.

j) Payment card industry data security standard

based upon, directly or indirectly arising from or is attributable to fines or penalties attributable to the **Insured's** failure to comply with the Payment Card Industry Data Security Standard.

k) Discrimination

based upon, directly or indirectly arising from or is attributable to any actual or alleged discrimination of any kind including, but not limited to, discrimination on the basis of race, colour, religion, age, sex, disability, pregnancy, marital status, political affiliations or ideology, sexual orientation or preference.

l) Failure to update firewalls, virus protection and other security software

based upon, directly or indirectly arising from or attributable to the failure of the **Insured** to, update firewalls, virus protection and any other security software in place within the **Policyholders Computer Systems** within one month of the update for such software being made publicly available.

m) Failure to encrypt personally identifiable and confidential information

based upon, directly or indirectly arising from or attributable to the failure of the **Insured** to encrypt personally identifiable and confidential information that is physically removed from the **Policyholder's** business premises on any **Portable Media Device**.

n) Business Continuity Plan (BCP)

based upon, directly or indirectly arising from or attributable to the failure of the **Insured** to have a Business Continuity Plan (BCP), which is tested for efficacy at least annually and which includes, provision for the backup of all the **Insured's** data stored off-site.

o) Retroactive date

based upon, directly or indirectly arising from or attributable to any act, error or omission which occurred before the **Retroactive Date**.

p) Pollution, Nuclear Risks, War & Terrorism, Natural Perils

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

i. the **Policyholder** or anyone on behalf of or at the direction of the **Policyholder** discharging, dispersing, releasing or permitting **Pollutants** to escape into or upon land, the atmosphere, or any water course or body of water; or

ii. ionising radiations or contamination by radioactivity from any nuclear material; or the hazardous properties of any nuclear explosive, assembly or component; or

iii. war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or property being taken, damaged or destroyed by a government or public or local authority; or

iv. a **Cyber Operation** carried out as part of the circumstances described in iii., or immediate preparation for circumstances in iii.; or

v. a **Cyber Operation** which has a major detrimental impact on the functioning, security or defence of a sovereign state due to disruption to the availability, integrity or delivery of an **Essential Service** in that state; or

vi. any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or

vii. any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**; or

viii. any natural peril or event including storm, windstorm, wildfire, bushfire, lightning, volcanic activity, hydrothermal activity, hail, tornado, cyclone, hurricane, earthquake, landslip, tsunami, flood, solar storm, freezing, weight of snow or any other force majeure.

For the purposes of this exclusion:

Cyber Operation means the use of a **Computer System** by, or at the direction or under the control of a sovereign state to disrupt, deny, degrade, manipulate, or destroy information in a **Computer System** of or in another sovereign state.

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.

To the extent of any inconsistency between this Exclusion and any Exclusion set out in Section 7, this Exclusion will apply to claims under this Optional Extension.

q) Financial markets

based upon, directly or indirectly arising from or attributable to the failure, interruption, degradation, or outage of securities exchanges, central counterparty clearing houses, and central securities depositories which are not under the control and management of the **Policyholder** or of a **Service Provider**.

5.1.3 Words with special meanings

Whenever the following words are used in the Cyber Cover optional extension in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Schedule**.

a) **Authority**

any official regulator, government body or government agency having legal authority to conduct a **Regulatory Investigation**.

b) **Commercially Confidential Information**

any information other than **Personal Information**:

i. which is not in the public domain or publicly available; and

ii. where disclosure may undermine the economic interest or competitive position of the owner of the information.

c) **Computer Records**

electronically stored data including magnetic tape, software or computer programs for or in respect of a **Computer System** used in the course of the provision of the **Professional Services**.

d) **Computer Systems**

all electronic computers including operating systems, software, hardware, firmware and all communication and open system networks, websites wheresoever hosted, offline media libraries and data backups used in the course of providing the **Professional Services**.

e) **Cyber Event**

i. **Hacking Attack** or **Virus**;

ii. malicious damage to the **Policyholder's Computer Systems** by an **Employee**;

iii. accidental damage to or destruction of the **Policyholder's Computer Records** because of an operational error, an error while establishing the parameters, or an involuntary error by an **Employee** or a **Service Provider**; or

iv. failure of a **Service Provider** hosting the **Policyholder's Computer Systems** as a direct result of i. to iii. above.

v. failure of a direct or back-up power supply or under/over voltage but only if such power supply is owned, managed or controlled by the **Policyholder** or by a **Service Provider**;

vi. electrostatic build-ups or electromagnetic disturbances.

f) **Cyber Extortion Costs**

i. any monies (including cryptocurrency or virtual currencies) paid by or on behalf of the **Policyholder** in accordance with applicable laws and with **Our** prior written consent (which shall not be unreasonably delayed or withheld);

ii. reasonable and necessary fees, costs and expenses that **We** incur or an **Insured** incurs with **Our** prior written consent (which shall not be unreasonably delayed or withheld):

in negotiating, mediating and crisis managing to terminate or end a **Security Threat** that might otherwise result in harm to an **Insured**;

1) to conduct an investigation to determine the cause of a **Security Threat**; or

2) the conduct any due diligence in relation to any payment (including jointly with **Us**).

g) **Enforcement Order**

a notice or order from any data protection authority, government authority, regulator, Court, Tribunal or other public body authorised to investigate, prosecute or otherwise enforce applicable laws or regulations relating to the collection, storage or processing of **Computer Records**, requiring the **Insured** to:

i. confirm compliance with any data protection and/or privacy law or regulation;

ii. take specific measures to comply with any applicable data protection and/or privacy law or regulation; or

iii. refrain from processing any specified **Computer Records** or using any specified **Computer System**.

h) **Fine or Penalty**

i. A monetary fine or penalty payable by an **Insured** to an **Authority**;

ii. **Fine or Penalty** does not include any amounts payable or calculated by reference to:

1) compensation;

2) compliance, remedial, reparation or restitution costs;

3) exemplary or punitive damages;

4) any consequential loss, meaning **We** will not pay for any direct or indirect financial or economic loss, for example loss of reputation, loss of use or enjoyment, loss of profits or depreciation, except if specifically **Covered** by this **Policy**;

5) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost; and

6) any fine or penalty the insurance of which is prohibited at law.

i) Hacking Attack

any malicious or unauthorised electronic attack including, but not limited to, any fraudulent electronic signature, bruteforce attack, phishing, denial of service attack, initiated by any **Third Party** or by any **Employee** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of the **Policyholder's Computer Systems** or **Policyholder's Computer Records**.

j) Internet and Email Content

any text, images, video, interactive content or advertising material published on the **Policyholder's** website or contained within an email sent by an **Insured** or any advertising material produced by or on behalf of the **Policyholder** and published on a **Third Party's** website.

k) Money

any legally recognised and valid physical, or electronic currency, coins or bank notes of a generally accepted value.

l) Personal Information

information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is:

i. true or not; and

ii. in a material form or not.

m) Portable Media Device

disks, tapes, USB or flash memory data storage devices, laptops, smart phones, tablet or removable device capable of storing data.

n) Privacy Breach Costs

the reasonable and necessary fees, costs and expenses that **We** incur or the **Policyholder** incurs with **Our** prior written consent (which shall not be unreasonably delayed or withheld) required to be incurred in respect of any **Privacy Obligations** to:

i. fulfil any legal or regulatory obligation the **Policyholder** has to notify **Third Parties** of an actual or suspected breach of privacy in relation to any **Personal Information**; or

ii. establish a credit monitoring service or identity theft helpline; or

iii. provide call centre support services; or

iv. conduct an independent audit of the **Policyholder's Computer Systems** to identify the source of such privacy breach.

o) Promotional Material

any marketing materials or tangible goods produced by or on behalf of the **Policyholder** for the purpose of marketing the **Professional Services**.

p) Privacy Obligations

the **Insured's** legal obligations arising directly from:

i. any privacy statement governing the handling of information on the **Policyholder's Computer Systems**; or

ii. any written contract between the **Policyholder** and a **Third Party** governing the processing and storage of credit card information on the **Policyholder's Computer Systems**;

iii. any implied contractual duty to use reasonable care and skill in the handling of **Personal Information** or credit card information (including breaches of the Payment Card Industry Data Security Standard);

iv. any legal obligation to notify individuals of an actual or potential breach of their **Personal Information**; or

v. statutory data protection regulations in the country or countries where the **Policyholder** operates, including industry specific data protection and security regulations as they currently exist and as amended.

q) Rectification Costs

reasonable and necessary fees, costs and expenses that **We** incur or the **Policyholder** incurs with **Our** prior written consent (which shall not be unreasonably delayed or withheld) as a result of the use of external consultants, contractors or advisers, including, but not limited to, forensic or security consultants or any additional costs that the **Policyholder** incurs to its **Employees**.

For the avoidance of doubt, **Rectification Costs** does not include the basic salaries of **Employees** or the **Policyholder's** office expenses or any payments that the **Policyholder** has paid or agreed to pay as part of any service or maintenance contract.

r) Regulatory Investigation

i. any formal or official civil examination, investigation, inquiry, hearing or other civil proceedings ordered or commissioned by any **Authority** into the **Privacy Obligations** of the **Policyholder** during the **Period of Insurance**:

1) requiring attendance before, or the production of documents by the **Policyholder** to, the **Authority**;

2) requiring questions to be answered by the **Policyholder** to the **Authority**;

3) identifying the **Policyholder** in writing as a target of an examination, investigation, inquiry, hearing or other proceeding by an **Authority**.

ii. a **Regulatory Investigation** shall be deemed to be first made when the **Policyholder** is first required to respond and/or attend or is so identified as a target of the **Regulatory Investigation**.

iii. **Regulatory Investigation** does not include any routine inspection, supervision, compliance or similar reviews or general industry wide violation reviews which extend to the **Policyholder**.

s) **Retroactive Date**

the date from which the **Policyholder** has continuously held cyber insurance cover via a standalone cyber insurance policy or via a cyber cover extension added to an existing insurance policy.

t) **Reward Expenses**

the reasonable and necessary property or other consideration paid by **Us** or by the **Policyholder** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to a **Third Party** (other than a law enforcement professional or **Authority**) for information which leads to a conviction of an indictable offence arising out of a **Hacking Attack** covered by this **Policy**.

u) **Security Threat**

any expressed and documented threat or connected series of threats to commit a local, cross border or multi-country attack against the **Policyholder's Computer System** for the purpose of demanding **Money**, securities or other tangible or intangible property of value from the **Insured**.

v) **Service Provider**

any person, partnership, company, corporation, incorporated society other body corporate or independent contractor that is not an **Insured**, who provides business process (including call centre, fulfilment and logistical support) and/or information technology services (including hosting, security management, co-location, and collects, stores or processes the **Policyholder's Computer Records**) for the **Policyholder** in accordance with a written contract.

w) **Third Party**

any person, partnership, company, corporation, incorporated society or other body corporate or entity who is not an **Insured**, at the time of their acts, errors or omissions.

x) **Virus**

any software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **Third Party** or by any **Employee** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of the **Policyholder's Computer Systems** or **Policyholder's Computer Records**.

5.2 Employment practices liability cover

5.2.1 The cover we provide

a) Notwithstanding Section 7.4 a), to the extent that it applies to **Employees**, and Sections 7.9 a), b) or c), **We** Cover the **Insured** in respect of an **Employment Practice Claim**:

i. first made against the **Insured** during the **Period of Insurance**; and

ii. **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and

iii. brought against the **Insured** by any natural person who is an **Insured** or any contract or temporary workers of the **Policyholder**,

for **Loss** sustained by reason of an **Employment Practice Breach**.

b) The **Specific Cover Limit** for the **Cover** provided under this Extension is shown on the **Schedule**.

c) The **Excess** applicable for each and every **Employment Practice Claim** which **We Cover** under this Extension is shown on the **Schedule**. The **Insured** will also be required to also pay this **Excess** for **Defence Costs** for such **Employment Practice Claims** under this Extension.

5.2.2 What is not covered

We do not provide **Cover** for any **Employment Practice Claims**, liabilities, losses, costs, and other matters **Covered** by this Extension:

a) Industrial action

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

i. acts committed during or in connection with any industrial dispute (whether between employer and **Employee** or between **Employees** or their unions or generally), strike, picket, lock-out, go slow or work to rule action; or

ii. collective bargaining negotiation or agreement.

This Exclusion does not apply to **Loss** in respect of an **Employment Practice Claim** for retaliation alleged to have been taken by the **Policyholder** against an **Insured** regarding industrial action.

b) Insolvency

brought after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, trustee administering a compromise or scheme of arrangement of the **Policyholder**. This Exclusion does not apply to **Employment Practice Claims** prior to such appointment.

c) Workers Compensation/Occupational Health and Safety Legislation

based upon, directly or indirectly arising from attributable to allegations or claims arising under, pursuant to, or in relation to any workers' compensation or occupational health and safety or similar legislation.

d) Bodily injury and/or property damage

in respect of any:

i. bodily injury (except emotional distress, mental anguish or humiliation), sickness, disease or death of any person; or

ii. destruction of or damage to tangible property (including the loss of use of such property).

e) Physical modification to premises

based upon, directly or indirectly arising from attributable to, or which involve any allegation of liability for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Policyholder** to make such premises, plant or equipment more accessible, or accommodating to the needs of disabled persons.

This Exclusion does not apply to **Claim Investigation Costs** incurred as a result of an **Employment Practice Claim** which seeks, as part of the relief sought, compensation or declarations in respect of such physical modifications.

f) Unfair contract claims

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

i. compensation sought in respect of a contract of employment alleged to be unfair; or

ii. the seeking of relief in respect of any allegedly unfair contract pursuant to any law, regulation, statute, ordinance or industrial instrument in the States or Territories of the Commonwealth of Australia or in New Zealand.

This Exclusion does not apply to **Loss** on account of a **Claim** for relief from retaliation in respect of any action taken by the **Policyholder** against an **Insured** regarding an allegedly unfair contract.

g) Benefits and statutory entitlements

based upon directly or indirectly arising from or attributable to:

i. workers compensation, disability benefits, unemployment benefits, redundancy benefits or compensation, retirement benefits, social security benefits or any similar law or obligation whatsoever; or

ii. any discretionary bonus, commission, severance payment, stock(including all plans and derivatives), other fringe benefit or an amount representing or calculated by reference to any of the above.

5.2.3 Words with special meaning

Whenever the following words are used in the Employment Practices Liability Optional Extension in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Schedule**.

a) **Defence Costs**

The reasonable and necessary legal costs and expenses (including any expert costs where the choice of expert has been approved by **Us**) of investigating, defending or settling any **Employment Practice Claim**.

b) **Employment Practice Claim**

i. Receipt by the **Policyholder** of any written demand for money or damages or non- pecuniary relief alleging an **Employment Practice Breach** relating to the employment of an **Employee** and seeking relief including, but not limited to, reinstatement, re-employment or any other injunctive relief; or

ii. Any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross-claim or counterclaim alleging an **Employment Practice Breach** relating to the employment of an **Employee**; or

iii. Subject to Section 5.2.2 c), any subpoena, notice to appear or similar notice requiring attendance at an administrative, regulatory or tribunal proceeding commenced by the Fair Work Ombudsman or any similar regulatory authority with legal jurisdiction over the **Policyholder's** employment practices which is served upon a **Policyholder** in respect of any **Employee** and in respect of any **Employment Practice Breach.**

c) **Employment Practice Breach**

Any actual or alleged wrongful or unfair employment-related:

i. denial of natural justice;

ii. discipline, discharge, dismissal or termination of employment;

iii. misrepresentation;

iv. breach of any oral, written or implied employment contract;

v. unlawful discrimination (including but not limited to, discrimination on the basis of race, colour, religion, age, sex, disability, pregnancy, marital status, political affiliations or ideology, sexual orientation or preference).

vi. harassment;

vii. failure to employ;

viii. failure to promote;

ix. failure to grant tenure;

x. deprivation of career opportunity;

xi. demotion;

xii. defamation;

xiii. invasion of privacy;

xiv. bullying; or

xv. infliction of emotional distress,

committed or attempted by any **Insured** on or after the 'Retroactive Date' as stated in the **Schedule**.

d) **Loss**

i. The amount which a **Policyholder** becomes legally obliged to pay on account of a **Covered Employment Practice Claim** including:

1) **Defence Costs**;

2) awards of damages;

3) judgments;

4) settlements to which **We** have consented;

5) awards of claimant's legal costs;

6) awards of interest;

7) order to pay compensation resulting from contravention of any statute;

8) punitive, exemplary, multiplied or aggravated damages that a **Policyholder** is ordered to pay by a Court of competent jurisdiction in which the **Employment Practice Claim** is determined; or

9) back-pay where reinstatement of an **Employee** is ordered by a Court (other than regular or overtime wages, salaries or fees of an **Employee**).

ii. **Loss** does not include:

1) any fines or penalties;

2) liquidated damages;

3) taxes

4) punitive, exemplary, or multiplied or aggravated damages arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or its territories or protectorates;

5) the future salary, wages, commissions, benefits or other remuneration entitlements of a claimant pursuant to a settlement of, order in, or other resolution of any **Employment Practice Claim**;

6) stock benefits; or

7) any other amounts which are prohibited to be paid by law in the jurisdiction in which the **Employment Practice Claim** is determined.

5.3 Fidelity cover optional extension

5.3.1 The cover we provide

a) **We Cover** the **Policyholder** for any **Fidelity Loss** that:

i. is caused by dishonest or fraudulent conduct of an **Employee**;

ii. is first discovered by the **Policyholder** during the **Period of Insurance** and within 36 months of the dishonest or fraudulent conduct occurring; and

iii. **We** are told about in writing as soon as reasonably practicable during the **Period of Insurance**.

b) The **Specific Cover Limit** for the **Cover** provided under this Extension is shown on the **Schedule**. The **Specific Cover Limit** is inclusive of **Claims Investigation Costs**.

c) The **Excess** applies to each and every **Fidelity Loss** resulting from each separate dishonest, fraudulent, malicious or illegal act or omission committed by an **Employee**.

d) The **Excess** applicable for a **Fidelity Loss** which **We Cover** under this Extension is shown on the **Schedule**. The **Policyholder** will also be required to pay this **Excess** in respect of **Claim Investigation Costs** for **Fidelity Losses** under this Extension.

5.3.2 Special conditions

a) The **Policyholder** shall give written notice, including affirmative proof and full particulars of any **Fidelity Loss**, during the **Period of Insurance**. The **Policyholder** is responsible for the costs and expenses of establishing the fact, nature and extent of the **Fidelity Loss**. There is no **Cover** until **We** are satisfied that such **Fidelity Loss** has in fact been sustained.

b) The **Policyholder** must take all reasonable precautions to prevent any loss and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen the likelihood of a **Fidelity Loss Covered** under this Extension arising.

c) **We** deduct from any payment **We** make for a **Covered Fidelity Loss** any money:

i. which the **Policyholder** would have paid to the fraudulent, dishonest, criminal or malicious **Employee**, if the **Employee** had not been fraudulent, dishonest, criminal or malicious; and

ii. the **Employee** is entitled to, which the **Policyholder** holds (if **We** can do so by law).

5.3.3 Exclusions

We do not provide **Cover** for any **Fidelity Losses**, liabilities, losses, costs, and other matters **Covered** by this Extension:

a) directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which the **Policyholder** knew, or ought reasonably to have known of, or suspected or ought reasonably to have suspected, at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent.

b) sustained outside of Australia or New Zealand or any loss arising directly or indirectly from any loss sustained outside of Australia or New Zealand.

c) the existence of which has only been established by profit and loss figures or by inventory calculations (including stock takes).

d) incurred by the **Policyholder** in re-writing, amending or re-installing the **Policyholder's** computer programs or systems.

e) consequential loss, meaning **We** will not pay for any direct or indirect financial or economic loss arising from any dishonest or fraudulent acts or omissions of any **Employee** except if specifically **Covered** by this **Policy**. Examples of consequential loss include loss of reputation, loss of use or enjoyment, loss of profits or depreciation.

f) caused by or contributed to by an **Employee** who was not employed by the **Policyholder** when the act or omission which caused or contributed to the **Fidelity Loss**.

g) directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of any **Principals** or **Former Principals**.

h) directly or indirectly based upon, or attributable to, or in consequence of default under a loan or any type of credit offered to or by the **Policyholder**.

i) directly or indirectly based upon, or attributable to, or in consequence of the **Policyholder** committing or condoning any such dishonest, fraudulent, criminal or malicious acts or omissions.

j) first discovered prior to the commencement of the **Period of Insurance** or first discovered after the expiration of the **Period of Insurance**.

k) directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious act or omission of any shareholder who, at the time of committing such acts had direct or indirect ownership of or control over 10% or more of the voting share capital of the **Policyholder**.

l) directly or indirectly based upon, or attributable to, or in consequence of the dissemination or accessing of any confidential information, including, but not limited to, patents, trademarks, copyrights, trade secrets, computer programs, or customer information.

m) directly or indirectly based upon, or attributable to, or in consequence of any kidnap, ransom or extortion.

5.3.4 Words with special meanings

Whenever the following words are used in the Fidelity Cover Optional Extension in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Schedule**.

a) **Fidelity Loss**

i. means the direct financial loss suffered by the **Policyholder** caused by and comprising the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes owned by the **Policyholder**; and

ii. does not include wages, salaries, or other remuneration benefits or entitlements of an **Insured**.

Section 6
Limits to the amount of cover

6.1 The policy limit

The **Policy Limit** applies to any one **Claim** and, subject to this Section 6, applies to the total of all **Claims** and **Covered Claims**, **Covered** by this **Policy**.

6.2 Reinstatement of the policy limit

a) The **Policy Limit** is the maximum amount **We** will provide **Cover** for in respect of any one **Claim**. **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy** subject to the following limitations:

i. **We** do not, in respect of any one **Claim**, provide **Cover** for an amount in the aggregate more than the **Policy Limit** or the **Specific Cover Limit** as applicable;

ii. for any one **Claim**, or **Claims** (including **Covered Claims**) arising from the one act, error or omission or from a series of, or from repeated or related, acts, errors or omissions, the aggregate **Cover** under this **Policy** will not exceed the **Policy Limit** or **Specific Cover Limit** as applicable;

iii. if there is extra insurance, held with another insurer in excess of the applicable limit of this **Policy**, then **Cover** in excess of one **Policy Limit** or **Specific Cover Limit** as applicable (up to a maximum of twice the **Policy Limit** or **Specific Cover Limit** as applicable) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance.

b) Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are paid in respect of that **Claim** up to an amount equal to the **Policy Limit** in accordance with Section 3.3 of this **Policy**. The aggregate amount **We** pay in total for **Claim Investigation Costs** for or in respect of all **Claims Covered** by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

6.3 Cover for claim investigation costs if the policy limit is exceeded

If the amount that has to be paid to dispose of, settle or finalise a **Claim** exceeds the **Policy Limit**, then **We** only pay for the same proportion of the **Claim Investigation Costs** as the **Policy Limit** bears to the amount to be paid to dispose of, settle or finalise the **Claim**. **We** never pay more than the **Policy Limit**.

6.4 Limit if multiple persons and/or entities are covered

The **Policy Limit** and **Specific Cover Limits** do not increase if there is more than one **Insured Covered** under this **Policy**, or if more than one **Insured** causes or contributes to the **Claim**.

6.5 Specific cover limits

If the **Policy** indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then the applicable **Specific Cover Limits** and not the **Policy Limit** applies. The **Specific Cover Limits** are included within, and not in addition to, the **Policy Limit**.

6.6 The excess

a) **We** only provide **Cover** (up to the **Policy Limit** or **Specific Cover Limit** as applicable) for that part of the **Covered Claim** which is above the applicable **Excess**.

b) There are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved, which the **Insured** will be required to pay. The amount of the **Excess** for:

i. Australia and New Zealand jurisdictions specified in the **Schedule** if the **Covered Claim** is under the jurisdiction of an Australian or New Zealand Court. The **Insured** will also be required to pay this **Excess** for the **Claim Investigation Costs** of such **Covered Claims** if the **Schedule** states 'Costs inclusive'. There is no **Excess** for **Claim Investigation Costs** when **We Cover** an **Insured** for such **Covered Claims** if the **Schedule** states 'Costs exclusive'.

ii. 'Other Jurisdictions' specified in the **Schedule** if the **Covered Claim** is under the jurisdiction of a Court other than an Australian or New Zealand Court. The **Insured** will also be required to pay this **Excess** for **Claim Investigation Costs** for the **Covered Claim**.

iii. 'Enquiries' specified in the **Schedule** for legal costs and expenses associated with an **Enquiry** which **We Cover** under Section 4.2 of this **Policy**.

c) The **Insured** will be required to pay only one **Excess** for all **Covered Claims**, **Covered** by this **Policy** arising from the one act, error or omission.

d) In the event of a **Claim** or **Covered Claim** arising from separate acts, errors or omissions, then only one **Excess** shall apply in respect of such **Claim** or **Covered Claim**.

e) Where the **Excess** is indicated in the **Policy** as 'Costs inclusive', the amount of the **Excess** is exclusive (i.e. net) of any GST payable in respect of **Claims Investigation Costs** or similar investigation or defence costs.

6.7 GST Input Tax Credits

a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be deemed to be net of **Our** entitlement to the Input Tax Credit.

b) Where and to the extent that the **Policyholder** is entitled to claim an Input Tax Credit for a payment required to be made by the **Policyholder** as an **Excess**, then the amount of the **Excess** shall be net of the entitlement of the **Policyholder** to the Input Tax Credit.

c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Policyholder** is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition, whether or not that acquisition is made.

d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Policyholder** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

Section 7
What is not covered

We do not provide **Cover** for any of the following **Claims** or **Covered Claims**:

7.1 Known claims and known circumstances

a) known at the inception date of this **Policy**; or

b) based upon, directly or indirectly arising from or attributable to any **Known Circumstance** or known **Claims** or **Covered Claims**; or

c) disclosed in the **Proposal** or arising from facts or circumstances which may give rise to a **Claim** or **Covered Claim** disclosed in the **Proposal**; or

d) if this **Policy** is endorsed or amended midterm, for any **Claim** or **Covered Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

7.2 Foreign jurisdictions

a) first brought in or determined pursuant to the laws of, the United States of America, its territories or protectorates; or

b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America, its territories or protectorates; or

c) where the proper law of the United States of America, its territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim**.

subject to the 'Jurisdictional Limits' specified in the **Schedule**.

7.3 Assumed duty or obligation

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

a) a liability under a contractual warranty, guarantee, undertaking or term (unless such liability would have existed regardless of the contractual warranty, guarantee, undertaking or term); or

b) circumstances where a right of claim, contribution or indemnity has been given up by an **Insured**, but only to the extent of the prejudice suffered by **Us** in those circumstances; or

c) circumstances where someone has done work or provided services under an arrangement or agreement with an **Insured** that limits any potential right for an **Insured** to claim or receive compensation, contribution or indemnity from that person, but only to the extent that **We** are prejudiced in those circumstances; or

d) any **Civil Liability** which an **Insured** agrees to accept in connection with the provision of the **Professional Services** and/or anything which is the subject of cover, which is more onerous than that which the **Insured** would otherwise have at common law, but only to the extent of the prejudice **We** suffer because of that agreement; or

e) any business not conducted for or on behalf of the **Policyholder**.

7.4 Related parties

against an **Insured** brought by or on behalf of:

a) any other **Insured**; or

b) any company in respect of which any **Insured** holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or has an executive role; or

c) any trust in respect of which any **Insured** is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or

d) any other person, firm or incorporated body having control of more than 10% of the voting shares or rights or an executive role in the operation of the **Policyholder** or any **Subsidiary**.

7.5 Refund of professional fees and trading debts

a) for (or calculated by reference to) the refund or waiver of any obligation to pay any fees, charges or disbursement (by way of damages, offset or otherwise); or

b) for costs and expenses incurred by or on behalf of an **Insured** in complying with any contractual obligation or making good any faulty product; or

c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or from any contract price or cost estimate being exceeded; or

d) arising from a liability to pay trading debts, the repayment of any loan and/or any other financial obligation incurred, as a matter of general commerce in connection with the **Insured's** business.

7.6 Profit

for any component of profit derived or derivable by an Insured.

7.7 Insolvency

based upon, directly or indirectly arising from or attributable to an **Insured's** insolvency, bankruptcy or liquidation.

7.8 Goods and workmanship

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

a) the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by or on behalf of an **Insured**;

b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by or on behalf of an **Insured**, or from supervision of such workmanship by an **Insured**.

7.9 Employers' liability, directors' and officers' liability, occupiers' liability, motor, marine

a) based upon, directly or indirectly arising from or attributable to the **Policyholder's** liability as an employer; or

b) arising from or which involves bodily injury (including mental anguish or emotional distress), sickness, disease or death of any **Employee**, contractor or worker who is under the direction, control and/or supervision of the **Insured** or for whose workplace safety the **Insured** is responsible;

c) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant; or

d) if an **Insured** is either an incorporated body or a director or officer of any incorporated body, arising from any act, error or omission of a director or officer of any incorporated body while acting in that capacity; or

e) arising from ownership or occupation (or alleged occupation) of land or buildings by an **Insured**; or

f) arising from or in respect of the ownership, control over, operation or use of any aircraft, marine craft or motor vehicles of any kind.

7.10 Punitive and exemplary damages, fines and penalties

or any liability for:

a) punitive, aggravated or exemplary damages; or

b) fines or penalties; or

c) criminal liabilities.

7.11 Intentional damage

arising from:

a) acts, errors, omissions by an **Insured** or any person entitled to **Cover** under this **Policy**, with the intention of or with reckless disregard for causing a third party loss, damage or injury; or

b) any wilful breach of statute, contract or duty by an **Insured** or any person entitled to **Cover** under this **Policy**.

7.12 Deregistration

arising from acts, errors or omissions by or on behalf of the **Insured** which occurred at a time when registration was not held, was cancelled, suspended or was otherwise not current and valid in circumstances where that **Insured** was required by law to maintain a registration or any form or certification to lawfully practice or provide the **Professional Services**.

7.13 Asbestos

which would not have arisen but for the existence of asbestos.

7.14 Nuclear or radioactive materials

arising from:

a) ionising radiations or contamination by radioactivity from any nuclear material; or

b) the hazardous properties of any nuclear explosive, assembly or component.

7.15 War and civil war

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

a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war;

b) insurrection, rebellion, revolution, military or usurped power.

7.16 Terrorism

directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any:

a) act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or

b) action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

7.17 Pollution

based upon, directly or indirectly arising from or attributable to the **Insured** or anyone on behalf of or at the direction of the **Insured** discharging, dispersing, releasing or permitting **Pollutants** to escape into or upon land, the atmosphere or any water course or body of water (**Pollution**). However, this exclusion will not apply if the **Pollution** results from an error or omission in design and/or advice and/or specification in the provision of the **Professional Services**.

7.18 Laws Impacting Cover

Claims or **Covered Claims** to the extent that it would be unlawful for **Us** to provide cover, pay any claim or provide any benefit under this **Policy**.

7.19 Sanctions

and, **We** will not be liable to provide any cover, pay any claim or provide any benefit under this **Policy** (including any refund of premium), to the extent that such cover, claim, benefit or refund may contravene or expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or any trade or economic sanctions, laws or regulations of any country.

Section 8
General terms and conditions

The **Insured** has certain responsibilities that are set out in this Section and in the **Policy**. These responsibilities also apply to any person that is **Covered** by the **Policy**.

If the **Insured** does not meet these responsibilities, **We** may refuse to pay a **Claim** or **Covered Claim** or reduce **Cover** under the **Policy**. **We** may also decide to cancel the **Policy**, if permitted, in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

The course of action **We** take when the **Insured** fails to do any of these things will be considered in each circumstance based on what impact or effect the **Insured's** failure caused or contributed to the **Claim** or **Covered Claim** or changes **Our** liability under the **Policy**.

Investigation, defence and settlement of claims

8.1 We must be told about claims

The **Policyholder** must tell **Us** in writing about a **Claim** as soon as reasonably possible during the **Period of Insurance**. If this is not done an **Insured's** right to **Cover** under this **Policy** may be affected.

8.2 Claims co-operation

Each **Insured** must:

a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen an **Insured's** liability in relation to a **Claim** or **Covered Claim**, **Covered** by this **Policy**;

b) as soon as reasonably possible give **Us** the help and information that **We** reasonably require to:

   i. investigate and defend a **Claim** or **Covered Claim**; and

   determine **Our** liability under this **Policy**.

   We will only request information relevant to handling the **Claim** and will explain why it is required.

8.3 We can protect our position

When **We** receive a notification under this **Policy** of any matter, **We** can take whatever action **We** consider appropriate to protect **Our** position or the **Insured's** position in respect of any such matter.

This does not:

a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or

b) prejudice **Our** rights under the **Policy** or at law.

8.4 Disclosure of information to us in respect of cover

The **Insured** shall share confidential and privileged information which **We** may reasonably require with **Us** and with **Our** legal advisers who **We** appoint about any matter notified to **Us** under the **Policy**.

We have a common interest with the **Insured** and with appointed legal advisers in the investigation, defence and settlement of any matter notified to **Us** under the **Policy** (**Common Interest**).

All confidential information provided to **Us** (including information which is subject to legal professional privilege), and/or to the legal advisers **We** appoint, by or on behalf of the **Insured**, which the **Insured** irrevocably consents to appointed legal advisers providing to **Us**, is so provided on the basis that:

a) subject to c) below, the information is provided to **Us** for that **Common Interest** purpose, is to be kept confidential and will not be further disclosed without the written consent of the **Insured**; and

b) in respect of confidential information which is subject to legal professional privilege, the **Insured** does not waive legal professional privilege; and

c) the information may be disclosed by **Us** to **Our** legal advisers and reinsurers on the basis that the above conditions apply to those persons' use of such information.

8.5 We can manage the covered claim

We:

a) can assume conduct of and defend or settle in the **Insured's** name any **Covered Claim**; or

b) subject to Section 6.6 of the **Policy**, have the duty where and the **Policyholder** so requests, to manage any matter (including the investigating, defence or settlement) in respect of which **We** have confirmed **Cover** under the **Policy**; and

c) can take any action, in the **Insured's** name, to pursue any right any **Insured** may have in connection with any **Covered Claim**.

We will act reasonably in exercising this right. **We** will keep the **Insured** reasonably informed and updated with the progress of any such matter.

8.6 An insured must not admit liability for or settle any covered claim

An **Insured** must not:

a) admit liability for, or settle any **Covered Claim**; or

b) incur any costs or expenses for a **Covered Claim** without first obtaining **Our** prior written consent (which shall not be unreasonably delayed or withheld). If **Our** prior written consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

8.7 Policyholder's right to contest

If the **Policyholder** does not consent to a settlement that **We** recommend and wants to contest or continue the dispute or legal proceedings, then **We** only provide **Cover** (subject to the **Policy Limit** or **Specific Cover Limit** as applicable) for:

a) the amount **We** could have settled the matter for; and

b) the **Claim Investigation Costs** incurred up to the date the **Policyholder** elected not to consent to the settlement.

8.8 Senior counsel

a) Unless a Senior Counsel, that **We** instruct, advises that the **Claim** or **Covered Claim** (which **We** have agreed to **Cover**) should be contested, neither **We** nor the **Policyholder** can require the other to contest any legal proceedings about a **Claim** or **Covered Claim** if the other does not agree to do so.

b) In formulating their advice, Senior Counsel must be instructed to consider the:

   i. economics of the matter, having regard to but not limited to, the:

      1. damages and costs likely to be recovered; and

      2. likely costs of defence.

   ii. **Insured's** prospects of successfully defending the **Claim** or **Covered Claim**.

c) The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs.**

d) If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters that Senior Counsel is required to consider), then the **Insured**:

   i. cannot (subject to Section 8.7) object to the settlement; and

   ii. will be required to pay any applicable **Excess** as soon as reasonably possible.

8.9 Payments to settle potential claims

Any money **We** pay to settle, and/or investigate anything which might give rise to a **Claim** or **Covered Claim**, is taken to be a payment:

a) to settle a **Claim** or **Covered Claim**; and

b) for the purpose of calculating the total of all **Claims** or **Covered Claims** under this **Policy**.

8.10 Recovering money from employees

We must not recover any amount paid out in respect of a **Claim** or **Covered Claim** under this **Policy** from any **Employee** unless the **Claim** or **Covered Claim** arose from dishonest, fraudulent, criminal or malicious acts or omissions of the **Employee**.

8.11 Offsetting of costs and expenses

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Insured** must pay whatever the amount is above that liability to **Us** as soon as reasonably possible after **We** ask for it.

We can offset that payment due from the **Insured** against (and deduct that amount from) any amount **We** are required to pay to or on behalf of the **Insured** under this **Policy**.

8.12 Loss prevention

The **Insured** shall, as a condition to **Cover** under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Covered Claim**.

8.13 Other insurance which may cover the risk

This **Policy** shall apply in excess of and shall not contribute to any policy arranged by any other party which has been endorsed to name the **Insured** as a beneficiary of cover under that policy and where the **Insured** is a non-contracting party to that policy.

The **Policyholder** must as soon as reasonably possible advise **Us** in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, **Covered** by this **Policy**.

8.14 Severability and non-imputation

For the sake of determining **Cover** under this **Policy**:

a) the **Proposal** shall be construed to be a separate application for cover by the **Policyholder** and by each natural person **Covered** by the **Policy**, and no statement or representation in or with respect to the **Proposal** by such person shall be imputed to any other natural person **Covered** by the **Policy**; and

b) knowledge possessed by and/or conduct of one natural person **Covered** by the **Policy** shall not be imputed to any other natural person **Covered** by the **Policy**; and

c) any knowledge possessed by and/or conduct of any past or present **Principal**, company secretary, chief executive officer, chief operating officer, chief financial officer, chief risk officer, in-house general counsel, or any person who signed the declaration or proposal form in connection with this **Policy** or any policy of which this **Policy** is a renewal or replacement, shall be imputed to the **Policyholder**.

8.15 Allocation

a) To the extent that a **Claim** comprises **Covered Matters** and **Uncovered Matters**, **We** will use best endeavours to agree a fair allocation between **Covered Matters** and **Uncovered Matters** having regard to the relative legal and financial exposure attributable to the **Covered Matters** and **Uncovered Matters**.

b) This allocation will apply to **Claim Investigation Costs**.

c) Any dispute between **Us** and the **Policyholder** on the allocation will be resolved by a Senior Counsel that **We** and the **Policyholder** both agree to instruct or in the absence of agreement, as appointed by the President of the Bar Association, or equivalent organisation, in the jurisdiction in which the **Claim** is made.

d) Any allocation between **Covered Matters** and **Uncovered Matters** as determined by Senior Counsel will apply retrospectively to the **Claim Investigation Costs** paid by **Us** or the **Policyholder** notwithstanding any prior payment on a different basis, unless otherwise agreed.

e) The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.

8.16 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

Other matters

8.17 Material change in the risk

The **Policyholder** must as soon as reasonably possible advise **Us** in writing during the **Period of Insurance** if any of the following occurs:

a) undertaking activities that are materially different from the **Professional Services**;

b) any cancellation, suspension, loss of or condition imposed upon any licence, registration or other authority required by the **Insured** to conduct the **Professional Services**; or

c) the **Insured** being insolvent, bankrupt or in liquidation; or

d) a **Run-Off Event**.

8.18 Authority to accept notices and to give instructions

The **Policyholders** listed in the **Schedule** are appointed individually and jointly as agent of each **Insured** in all matters relating to this **Policy** including **Claims** or **Covered Claims Covered** by the **Policy**.

In particular (but without limitation) the **Policyholders** listed in the **Schedule** are agents for the following purposes:

a) to receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and

b) to accept endorsements or other notices provided for in this **Policy**; and

c) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and

d) to consent to any settlement **We** recommend; and

e) to do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for investigating, defending or settling **Claims** or **Covered Claims**; and

f) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

8.19 Law of the policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have exclusive jurisdiction in any dispute about or under this **Policy**.

8.20 Territory covered by this policy

Subject to Section 7.2, **Cover** under this **Policy** is not restricted by where the act, error or omission giving rise to the **Claim** occurred.

8.21 Schedule must be included

This **Policy** is only legally enforceable if it includes a Schedule signed by one of **Our** officers.

Cancelling the policy

8.22 The policyholder can cancel the policy

The **Policyholder** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**. **We** will be entitled to retain a premium for the pro-rata time on risk plus applicable statutory charges.

8.23 We can cancel the policy

a) **We** may cancel this **Policy** in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth), by giving notice in writing to the **Policyholder** of the date from which cancellation is to take effect.

b) **We** may deliver this notice to the **Policyholder** personally, post it or email it to the **Policyholder's** broker or to the address the **Policyholder** last gave **Us**. Proof that **We** sent the notice is sufficient proof that the **Policyholder** received the notice.

8.24 Refund of premium

After cancellation pursuant to Section 8.23, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties.

Section 9
Words with special meanings

9.1 Civil Liability

The compensatory damages, costs and expenses in respect of a **Claim** including the legal costs of the person making the **Claim**, which an **Insured** becomes liable for.

9.2 Claim

The receipt by an **Insured** of:

a) any originating process (in a legal proceeding or arbitration), cross-claim or counterclaim or third party or similar notice claiming compensation against an **Insured**; or

b) any written or verbal demand from a third party claiming compensation against an **Insured**.

9.3 Claim Investigation Costs

The reasonable and necessary legal costs and expenses (including any expert costs where the choice of expert has been approved by **Us**) of investigating, defending or settling any:

a) **Claim** or **Covered Claim**; or

b) originating process (in a legal proceeding or arbitration), cross-claim or counterclaim or third party or similar notice or written or verbal demand from a third party claiming declaratory and/or other equitable relief against an **Insured** arising from the provision of the **Professional Services**.

9.4 Cover

Indemnity provided under this **Policy**.

9.5 Covered Claim

The:

a) **Claims**, liabilities, losses, costs, and other matters **Covered** under the **Policy**; or

b) circumstances which may give rise to any of the matters set out in a) above, in respect of which **We** elect to protect the **Insured's** or **Our** position pursuant to Section 8.3 of the **Policy**.

9.6 Covered Matters

That part of a **Claim**, or **Covered Claim** made against or sought from the **Insured** for which **We** provide **Cover**.

9.7 Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

9.8 Employee

A natural person who is not a **Principal**, but who is or was, at the time the relevant act, error or omission giving rise to the **Claim** occurred, a person who:

a) provided services to and was remunerated by the **Policyholder** for that service under a contract of service; or

b) was or is deemed to be an employee or worker under the Superannuation Guarantee (Administration) Act 1992 (Cth), any workers compensation legislation in the relevant State or territory, or any other relevant legislation; or

c) a volunteer worker, apprentice, trainee, work experience personnel or student,

and in respect of a), b) and c) above is or was at the time of the act, error or omission, under the **Policyholder's** direction, control and supervision in the provision of **Professional Services**.

9.9 Enquiry

Any legal or quasi legal enquiry including coronial enquiries (into a matter arising directly out of the provision of **Professional Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) conducted by a body (including a regulatory, licensing or statutory body) which has jurisdiction over the **Insured** (either by reason of a statutory power or by reason of the **Insured's** membership of a professional association which has the power to discipline its members).

9.10 Excess

The sum shown in the **Schedule** or in Sections 4 or 5 of the **Policy** (as applicable), which the **Covered Claim** must exceed before **We** will be liable under this **Policy** in respect of each **Covered Claim**. It is described in more detail in Section 6.6.

9.11 Former Principal

A person who has been, but is no longer:

a) **Principal** of a **Policyholder**; or

b) the **Principal** of any corporate entities through which the **Policyholder** previously traded, in the course of the provision of the **Professional Services**.

9.12 Insured

Each of the following, individually and jointly:

a) the **Policyholder**;

b) any **Subsidiary**;

c) any past and/or present **Employee**, but only in his or her capacity as such.

9.13 Intellectual Property

Copyright, design, patent, trade mark or moral right, including false attribution of authorship or any other intellectual property rights which exist in Australia or New Zealand whether created by statute or at common law.

9.14 Interested Party

Any third party, who is not otherwise an **Insured**, with whom the **Insured** has contracted to provide **Professional Services** for and on behalf of.

9.15 Joint Venture

An undertaking (regardless of what it is called) which the **Policyholder** carries on together with someone else who is not otherwise **Covered** under this **Policy**.

9.16 Known Circumstance

Any fact, situation or circumstance that:

a) an **Insured** was aware of 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 the **Period of Insurance** or before any relevant amendment or endorsement of the **Policy**, might result in someone making an allegation against an **Insured** in respect of a liability, loss or costs, that might be **Covered** by this **Policy** or the amendment/endorsement to this **Policy**.

9.17 Lost

Documents destroyed, damaged, lost, distorted, erased or mislaid as a result of one event solely in the provision of **Professional Services**.

However, **Loss** of **Documents** does not include loss of or damage (including rearrangement) to electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system.

9.18 Period of Insurance

The 'Period of Insurance' stated in the **Schedule**.

9.19 Policy

The insurance policy made up of:

a) all terms, conditions and exclusions contained in this document;

b) the **Schedule**; and

c) any endorsements contained in the **Schedule**.

9.20 Policy Limit

The limit stated in the **Schedule** as the 'Total Sum Insured'. See also Section 6 of this **Policy**.

9.21 Policyholder

Each of the following, individually and jointly:

a) each person, firm or incorporated body identified in the **Schedule** as 'The Policyholder', each **Principal** or **Former Principal** of any such firm or incorporated body; and

b) any entity which is engaged in the provision of **Professional Services** and which is created and controlled, during the **Period of Insurance**, by anyone identified in the **Schedule** as 'The Policyholder'; and

c) anyone who becomes a **Principal** of the 'The Policyholder' identified in the **Schedule**, during the **Period of Insurance** (but only in respect of work undertaken for or on behalf of 'The Policyholder' identified in the **Schedule**).

9.22 Pollutants

Any solid, liquid, gas or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

9.23 Premium

'Total Payable Premium' as stated in the **Schedule**.

9.24 Principal

A sole practitioner, a partner of a firm, or a director of a company, which practitioner, firm, director or company is **Covered** by this **Policy**.

9.25 Professional Services

The provision by or on behalf of the **Policyholder** of the 'Professional Services' stated in the **Schedule**.

9.26 Proposal

The written or electronic proposal form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

9.27 Publicity Campaign

A publicity and/or public relations campaign or campaigns designed and implemented by a public relations consultant.

9.28 Run-Off Events

A **Policyholder** ceasing to exist or operate, or is consolidated with, merged into or acquired by another entity.

9.29 Schedule

The schedule attached to this **Policy** or any schedule subsequently substituted during the **Period of Insurance** and duly signed by one of **Our** officers.

9.30 Specific Cover Limits

The limit of **Cover** for each of the matters listed in the **Schedule** under 'Specific Cover Limits' or in Sections 4 and 5 of this **Policy** which are included within, and are not in addition to the **Policy Limit**.

9.31 Subsidiary

a) Any company or other incorporated entity which at the commencement of the **Period of Insurance** by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the **Schedule** as 'The Policyholder'.

b) **Subsidiary** does not include:

i. an entity incorporated or domiciled in the United States of America or its territories or protectorates;

ii. an entity that has its securities listed on any securities exchange;

iii. an entity whose total gross professional fees and/or total revenue exceeds, as at its last balance date or date of its creation (whichever is sooner), 20% of the total gross professional fees and/or total revenue of any incorporated body identified in the **Schedule** as 'The Policyholder',

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

9.32 Terrorism

Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

a) involves violence against one or more persons; or

b) involves damage to property; or

c) endangers life other than that of the person committing the action; or

d) creates a risk to health or safety of the public or a section of the public; or

e) is designed to interfere with or to disrupt an electronic system.

9.33 Uncovered Matters

That part of a **Claim** or **Covered Claim** made against or sought from the **Insured** for which **We** do not provide **Cover**.

9.34 We or Us or Our

CGU Australia Pty Ltd ABN 62 004 478 960 AFSL 700014 trading as CGU Insurance.

Policy 2
Broadform (Public And Products) Liability Insurance

Section 1
How to read this insurance policy

1.1 Words with special meanings

Some of the words in this **Policy** have special meanings. These meanings can be found in Section 8 of the **Policy** ("Words with special meanings"). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy Schedule**.

1.2 Policy interpretation

Except where the context otherwise requires it:

a) the singular includes the plural and the plural includes the singular.

b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.

c) words importing a gender include every other gender.

1.3 Paragraph headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

1.4 References to legislation

References to legislation in this **Policy** includes any amendment, replacement, re-enactment, successor, equivalent or similar legislation.

Section 2
The insurance contract

2.1 Payment of the premium

We agree to provide the cover described in this **Policy** upon full payment of the **Premium**. If full payment of the **Premium** is not made, there is no cover.

2.2 Proposal

Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured**, in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of that information is wrong or false, it may affect entitlement to **Cover** under this **Policy**.

2.3 Period of insurance

This **Policy** is in force for the **Period of Insurance**.

2.4 Responsibilities and notification of change of material risk

a) The **Policyholder** must as soon as reasonably possible provide **Us** with written notice of:

   i. every change which materially varies any of the facts or circumstances existing at the commencement of this **Policy** that comes to the **Policyholder's** knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the **Policyholder's** knowledge; and

   ii. if the **Policyholder** does not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, subject to the Insurance Contracts Act 1984 (Cth), **We** may refuse to pay a claim, either in whole or in part.

b) When **We** receive notification of a change, **We** may decide to either:

   i. continue cover with no change to the premium payable;

   ii. reduce the premium payable and return any refund to the **Policyholder**;

   iii. charge the **Policyholder** an additional premium (the **Policyholder** can cancel the policy if the additional premium is not acceptable); or

   iv. cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

c) It is important for the **Policyholder** to know that **We** may make changes to this **Policy** as a result of a change in information. When there is a change, **We** will inform the **Policyholder**.

d) If the **Policyholder** does not notify **Us** of a material change, **We** may refuse to pay a claim or reduce cover under the **Policy**. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

e) The course of action **We** take when the **Policyholder** fails to notify **Us** of a material change will be considered in each circumstance based on what impact or effect the **Policyholder's** failure to do so caused or contributed to a claim or an **Occurrence**.

Section 3
The cover we provide

3.1 The cover we provide

Subject to the terms, exclusions, definitions, endorsements and limitations of this **Policy**, **We** will indemnify the **Insured** for all amounts which the **Insured** is legally liable to pay as compensation in respect of:

a) **Personal Injury**;

b) **Property Damage**; and/or

c) **Advertising Liability**;

happening during the **Period of Insurance**, within the Geographical Limits as stated within Section 5.1 of the **Policy**, as a result of an **Occurrence** and caused by the **Policyholder's Business** or the **Policyholder's Products**.

3.2 Limit of liability

a) **Our** liability in respect of any one **Occurrence** shall not exceed the **Policy Limit** for **Public Liability**, **Products Liability** and **Advertising Liability**.

b) All **Personal Injury**, **Property Damage** and **Advertising Liability** arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one **Occurrence**.

c) **Our** total aggregate limit during any one **Period of Insurance** for all claims arising out of **Products Liability** and **Advertising Liability** shall not exceed the **Policy Limit**.

d) Provided that the **Policy Limit** in respect of **Occurrences** in the United States of America or Canada or their protectorates or territories will be inclusive of Section 4 Supplementary Payments and will apply in the aggregate to all claims in any one **Period of Insurance**.

Section 4

4.1 Supplementary payments

a) With respect to the indemnity provided by this **Policy**, **We** will pay in addition to the **Policy Limit**, Supplementary Payments.

b) **We** will defend any claim or suit against the **Insured** seeking compensation for **Personal Injury**, **Property Damage** and/or **Advertising Liability** to which indemnity under this **Policy** applies, even if the allegations of the claim or suit are groundless, false or fraudulent.

c) **We** are not obliged to pay Supplementary Payments or defend any claim or suit (or part of any such claim or suit) that is not indemnified under this **Policy**.

d) **We** are not obliged to pay Supplementary Payments or defend any claim or suit after **Our** liability under this **Policy** to indemnify the **Insured** has been exhausted by either payment of judgment, settlement or payment to the **Insured**.

e) If a payment exceeding **Our** liability under this **Policy** to indemnify the **Insured** is made to dispose of a claim, **Our** liability for Supplementary Payments is limited to the proportion of **Our** liability to indemnify the **Insured** under this **Policy** bears to that payment.

f) Supplementary Payments means the reasonable legal costs and expenses:

i. solely and exclusively incurred by the **Insured** with **Our** prior written agreement, to defend a claim under Section 3.1 of this **Policy** for which the **Insured** is entitled to indemnity under this **Policy**;

ii. solely and exclusively incurred by **Us** to investigate and defend a claim under clause 3.1 of this **Policy** for which the **Insured** is entitled to indemnity under this **Policy**; and

iii. of any claimant who has made a claim against the **Insured** which is a claim under clause 3.1 of this **Policy** for which the **Insured** is entitled to indemnity under this **Policy** and the **Insured** is liable to pay those legal costs and expenses.

g) Supplementary Payments do not include the **Insured's** own internal costs including wages, salaries or costs of any **Insured**.

Section 5
Geographical Limits

5.1 Geographical Limits means:

a) anywhere in the world, except **North America**; and

b) **North America** if the **Personal Injury**, **Property Damage** or **Advertising Liability** arises from:

i. the **Policyholder's Products** that are exported into those countries; or

ii. Work performed by travelling employees and/or directors whose normal place of residence is outside **North America**.

Section 6
What is not covered

We will not be liable to indemnify the **Insured** in respect of any liability:

6.1 Employer's Liability

a) in respect of which the **Insured** is or should be entitled to indemnity under any fund, scheme, policy of insurance or self insurance pursuant to or required by any legislation relating to workers compensation, whether or not such fund, scheme or insurance has been effected. However, this **Policy** will respond to the extent that the **Insured's** liability would not be covered under any such policy, fund, scheme or self insurance arrangement had it complied with its obligations pursuant to such law.

For the purpose of Exclusion 6.1 a) the term 'worker' means any person deemed to be employed by the **Insured** pursuant to any workers compensation law or legislation. Voluntary workers and unpaid work experience students are not deemed to be the **Insured's** workers.

b) imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination.

c) relating to any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment or prospective employment by the **Insured**.

6.2 Motor Vehicles

a) for **Personal Injury** or **Property Damage** caused by or arising out of the ownership, operation, use or possession of any **Vehicle**:

i. which is registered for use on a public road or which is legally required to be registered; and

ii. in respect of which compulsory liability insurance or statutory indemnity is required by any legislation, whether or not such insurance has been effected.

b) This Exclusion does not apply to:

i. claims in respect of **Personal Injury** where compulsory liability insurance or statutory indemnity does not provide indemnity and where the reason or reasons why compulsory liability insurance or statutory indemnity does not provide indemnity does not involve a breach of any legislation by the **Insured**;

ii. **Personal Injury** or **Property Damage** arising out of or in connection with the loading and unloading of goods to or from any **Vehicle** or the delivery or collection of goods to or from any **Vehicle**;

iii. **Personal Injury** or **Property Damage** arising out of the use of any **Vehicle** (including any tool or plant forming part of or attached to or used in connection with such **Vehicle**) while being operated or used as a **Tool of Trade**; or

iv. **Property Damage** in relation to the circumstances described in clause 6.4 d) and e).

6.3 Aircraft

arising out of or in any way connected with:

a) the ownership, use, maintenance, operation of any **Aircraft** by the **Insured**;

b) repair or servicing of critical components of **Aircraft**;

c) any of the **Policyholder's Products** that are incorporated into the hull or critical components of any **Aircraft**; or

d) any of the **Policyholder's Products** which the **Insured** knew, or reasonably should have known, would be incorporated into the structure, machinery, controls or construction of any **Aircraft**.

6.4 Property in Physical or Legal Control

arising out of or in any way connected with **Property Damage** to property owned by, leased, hired, on loan or rented to, or otherwise in the physical or legal control of the **Insured** other than:

a) premises or part of any premises (including the contents of such premises) leased or rented to the **Insured**, or temporarily occupied by the **Insured** for the purpose of the **Business**. This does not extend to any liability where the **Insured** has assumed the responsibility to effect or maintain insurance with respect to any premises referred to in this clause;

b) premises temporarily occupied by the **Insured** (including the contents of such premises) for the purpose of carrying out work in connection with the **Business**. This does not extend to liability for physical damage to or destruction of any premises or contents on which the **Insured** was or is working on if such physical damage or destruction arises from such work;

c) any other property temporarily in the **Insured's** possession for the purpose of being worked upon. This does not extend to liability for physical damage to or destruction of that part of any property on which the **Insured** was or is working on if such physical damage or destruction arises from such work;

d) any **Vehicle** (including its contents, spare parts and accessories while they are in or on a **Vehicle**) not belonging to or used by the **Insured** while such **Vehicle** is in a car park owned or operated by the **Insured** provided the **Insured** does not operate the car park for reward as a principal part of the **Business**;

e) **Property Damage** to any **Vehicle** temporarily in the **Insured's** possession for the purpose of parking and unpacking such **Vehicle**; or

f) any other property (except property owned by the **Insured**) temporarily in the **Insured's** physical or legal care, custody or control subject to a maximum of $500,000 or other amount stated in the **Schedule**, for any one **Occurrence** and in the aggregate during any one **Period of Insurance**.

6.5 Faulty Workmanship

arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting or improving any work done or undertaken by or on behalf of an **Insured**.

6.6 Products defect

arising out of or in any way connected with **Property Damage** to any of the **Policyholder's Products** if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

This Exclusion is restricted to the defective or harmful or unsuitable part of any of the **Policyholder's Products** and does not apply to any resultant damage caused to the remainder of the **Policyholder's Products**.

6.7 Product Recall and Repair

arising out of or in any way connected with the withdrawal, recall, inspection, repair, adjustment, replacement, removal, cost of investigation, disposal or loss of use of any of the **Policyholder's Products** or any property of which the **Policyholder's Products** form a part where the **Policyholder's Products** or property are withdrawn from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in the **Policyholder's Products**.

6.8 Watercraft and Hovercraft

a) arising out of or in any way connected with the ownership, maintenance, operation or use by an **Insured** of any **Watercraft** exceeding 23 metres in length or any Hovercraft.

b) This Exclusion does not apply to liability arising out of:

   i. the use of **Watercraft** by an independent contractor carrying out works and/or operations on behalf of the **Insured** in the course of the **Policyholder's Business**;

   ii. **Watercraft** or Hovercraft owned and operated by others and used by an **Insured** for the purpose of business entertainment; or

   iii. floating jetties, floating pontoons or buoys.

c) For the purpose of this Exclusion, Hovercraft means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

6.9 Contractual Liability

a) arising out of or in any way connected with any liability or obligation:

   i. assumed under the terms of a contract, agreement or warranty; or

   ii. which requires the **Insured** effect or maintain insurance with respect to premises, property or goods not owned by the **Insured**.

b) Exclusion 6.9 a) does not apply to:

   i. the extent that such liability or obligation would have been implied by law in the absence of such contract, agreement or warranty;

   ii. any contract specifically excepted by **Our** written agreement; or

   iii. liability assumed under the following incidental contracts:

      1. any written contract with any public authority for the supply of water, gas, electricity or telephone services in connection with the **Business** but does not include those contracts in connection with work done for such authorities;

      2. any written rental agreement for the lease of real or personal property provided such rental, lease or hiring agreement does not require the **Insured** to effect or maintain any insurance with respect to such property; or

      3. where the **Insured** is required by contract to release any government, public authority, statutory authority or landlord but only to the extent required by such contract.

6.10 Professional Liability

a) arising out of any breach of duty owed in a professional capacity or any error or omission connected to the **Insured** or any person for whose breach of duty the **Insured** may be legally liable.

b) This Exclusion does not apply to claims arising out of:

i. advice or service where no fee was charged;

ii. the rendering of or failure to render professional medical advice by any person employed by the Insured (not being qualified medical practitioner) to provide first aid on the **Insured's** premises; or

iii. advice given in respect of the use or storage of the **Policyholder's Products**.

6.11 Defamation

for defamation:

a) resulting from any statement made prior to the **Period of Insurance**; or

b) resulting from any statement made by the **Insured**, or at the direction of an **Insured**, with knowledge of its falsity; or

c) incurred by any **Insured** whose business is advertising, broadcasting, publishing or telecasting.

6.12 Fines and Punitive Damages

for:

a) punitive, aggravated or exemplary damages; or

b) fines or penalties; or

c) criminal liabilities.

6.13 Pollution

arising out of or in any way connected with:

a) the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **Pollutants** into or upon any property, land, the atmosphere or any watercourse or body of water, including ground water; or

b) the cost of testing, monitoring for, containing, removing, nullifying, or cleaning up of **Pollutants** or the cost of preventing the release or escape of **Pollutants**;

provided that with respect to liability incurred outside **North America**, this Exclusion shall not apply where such discharge, seepage, migration, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured** which takes place in its entirety at a specific time and place during the **Period of Insurance**. This Exclusion will apply to any liability incurred in **North America** regardless of how it arises.

6.14 Asbestos

arising out of or in any way connected with any claim or claims in respect of **Personal Injury**, **Property Damage**, **Advertising Liability**, loss or losses arising directly or indirectly out of, or in any way connected with asbestos in whatever form or quantity.

6.15 Nuclear or Radioactive Materials

arising out of or in any way connected with operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:

a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;

b) the use, handling or transportation of radioactive materials; or

c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

This Exclusion does not apply to liability arising from radio-isotopes or 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.

6.16 War and Civil War

arising out of or in any way connected with loss or damage 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 expropriation, 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.

6.17 Terrorism

arising out of or in any way connected with:

a) death, injury, illness, loss or damage directly or indirectly caused by, contributed by, resulting from or arising out of or in connection with any act of **Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the death, injury, illness, loss or damage; or

b) death, injury, illness, loss or damage directly or indirectly caused by, contributed by, resulting from or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against or responding to any act of **Terrorism**.

6.18 Electronic Data

arising out of or in any way connected with:

a) total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation or misappropriation or other use of **Electronic Data**;

b) error in creating, amending, entering, deleting or using **Electronic Data**; or

c) total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

6.19 Advertising Liability

for any **Advertising Liability** arising out of or in any way connected with any:

a) statement made by, or at the direction of an **Insured** where the **Insured** knew or suspected the statement or any part of the statement was false;

b) failure to perform any obligation pursuant to any contract. This Exclusion does not apply to any claim for unauthorised appropriation of advertising ideas, concepts or designs contrary to an implied contract;

c) incorrect description of the **Policyholder's Products**, goods or services;

d) any mistake in the advertised price of the **Policyholder's Products**, goods or services;

e) failure of the **Policyholder's Products**, goods or services to conform with advertised performance, quality, fitness or durability; or

f) **Insured** whose business is advertising, broadcasting, publishing or telecasting.

6.20 Products guarantee

arising out of or in any way connected with any guarantee or warranty given by or on behalf of the **Insured** in respect of any of the **Policyholder's Products**.

6.21 Loss of use

for the loss of use of tangible property which has not been physically damaged or destroyed resulting from:

a) a delay in or lack of performance by or on behalf of the **Insured** in respect of any contract or agreement; or

b) the failure of the **Policyholder's Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness, or durability expressly or impliedly warranted or represented by the **Insured**.

This Exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to, or destruction of the **Policyholder's Products** or work performed by or on behalf of the **Insured** after the **Policyholder's Products** or work have been put to their intended use by any person or organisation other than the **Insured**.

6.22 Silica

arising out of or in any way connected with the inhalation of, or exposure to silica in any form.

6.23 Laws Impacting Cover

to the extent that it would be unlawful for **Us** to provide cover, pay any claim or provide any benefit under this **Policy**.

6.24 Sanctions

and, **We** will not be liable to provide any cover, pay any claim or provide any benefit under this **Policy** (including any refund of premium), to the extent that such cover, claim, benefit or refund may contravene or expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or any trade or economic sanctions, laws or regulations of any country.

Section 7
General terms and conditions

The **Insured** has certain responsibilities that are set out in this section and in the **Policy**. These responsibilities also apply to any person that is covered by the **Policy**.

If the **Insured** does not meet these responsibilities, **We** may refuse to pay a claim or reduce what **We** pay for a claim. **We** may also decide to cancel the **Policy** if permitted in accordance with the provisions of the Insurance Contracts Act 1984 (Cth).

The course of action **We** take when the **Insured** fails to do any of these things will be considered in each circumstance based on what impact or effect the **Insured's** failure to do so caused or contributed to a claim under the **Policy**, an **Occurrence**, or changes **Our** liability under the **Policy**.

Investigation, defence and settlement of claims

7.1 We must be told about claims

The **Policyholder** must tell **Us** in writing as soon as reasonably possible of every **Occurrence**, claim, writ, summons, impending proceedings, impending prosecution and/or inquest in respect of which there may arise a liability under this **Policy**. If this is not done an **Insured's** right to cover under this **Policy** may be affected.

7.2 Claims co-operation

Each **Insured** must:

a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen an **Insured's** liability in relation to a claim or **Occurrence**, covered by this **Policy**, including but not limited to:

   i. preserving any property, products, appliances, plant or other things, provided it is safe to do so, and which might prove necessary or useful by way of evidence in connection with any claim. So far as may be reasonably practicable no alteration or repair shall be effected without **Our** prior written consent (which shall not be unreasonably delayed or withheld) and until **We** have had the opportunity of inspection, if **We** ask, at any reasonable time and place.

   ii. at the **Insured's** expense take all reasonable steps to prevent other **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the same or similar conditions, but such expense shall not be recoverable under this **Policy**.

b) as soon as reasonably possible give **Us** help and information that **We** reasonably require to:

i. investigate, defend and settle any matter in respect of which **We** have confirmed cover under the **Policy**; and

ii. determine **Our** liability under this **Policy**.

7.3 We can protect our position

When **We** receive a notification under this **Policy** of any matter, **We** can take whatever action **We** consider appropriate to protect **Our** position or the **Insured's** position in respect of any such matter.

This does not, however:

a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or

b) prejudice **Our** rights under the **Policy** or at law.

7.4 Disclosure of information to us in respect of cover

The **Insured** is required to share confidential and privileged information, which we may reasonably require, with **Us** and with **Our** legal advisers who **We** appoint about any matter notified to **Us** under the **Policy**.

We have a common interest with the **Insured** and with appointed legal advisers in the investigation, defence and settlement of any matter notified to **Us** under the **Policy** (**Common Interest**).

All confidential information provided to **Us** (including information which is subject to legal professional privilege), and/or to the legal advisers **We** appoint, by or on behalf of the **Insured**, which the **Insured** hereby irrevocably consents to appointed legal advisers providing to **Us**, is so provided on the basis that:

a) subject to c) below, the information is provided to **Us** for that **Common Interest** purpose, is to be kept confidential and will not be further disclosed without the written consent of the **Insured**; and

b) in respect of confidential information which is subject to legal professional privilege, the **Insured** does not waive legal professional privilege; and

c) the information may be disclosed by **Us** to **Our** legal advisers and reinsurers on the basis that the above conditions apply to those persons' use of such information.

7.5 We can manage the claim

We:

a) can assume conduct of and defend or settle in the **Insured's** name any claim; or

b) subject to any applicable **Excess**, have the duty where and the **Policyholder** so requests, to manage any matter (including the investigating, defence or settlement) in respect of which **We** have confirmed cover under the **Policy**; and

c) can take any action, in the **Insured's** name, to pursue any right any **Insured** may have in connection with any matter in respect of which **We** have confirmed cover under the **Policy**.

d) can attend any inquest in respect of which there may arise liability under this **Policy**.

We will act reasonably in exercising this right. **We** will keep the **Insured** reasonably informed and updated with the progress of any such matter.

7.6 An insured must not admit liability for or settle any claim

An **Insured** must not:

a) admit liability for, or settle, make any offer, promise or payment in connection with any **Occurrence** or claim; or

b) incur any costs or expenses for an **Occurrence** or claim,

without first obtaining **Our** prior written consent (which shall not be unreasonably delayed or withheld). If **Our** prior written consent is not obtained, the **Insured's** right to cover under this **Policy** may be affected.

7.7 Policyholder's right to contest

If the **Policyholder** does not consent to a settlement that **We** recommend and wants to contest or continue the dispute or legal proceedings, then **We** only provide cover (subject to the **Policy Limit**) for:

a) the amount **We** could have settled the matter for; less

b) the applicable **Excess**; plus

c) any Supplementary Payments, as specified in Section 4 of the **Policy**, incurred up to the date the **Policyholder** elected not to consent to the settlement.

7.8 Senior counsel

a) Unless a Senior Counsel, that **We** instruct, advises that the claim or **Occurrence** (which **We** have agreed to cover) should be contested, neither **We** nor the **Policyholder** can require the other to contest any legal proceedings about a claim if the other does not agree to do so.

b) In formulating his or her advice, Senior Counsel must be instructed to consider the:

i. economics of the matter, having regard to but not limited to, the:

1. damages and costs likely to be recovered; and

2. likely costs of defence.

ii. **Insured's** prospects of successfully defending the claim.

c) The cost of Senior Counsel's opinion will form part of the Supplementary Payments as specified in Section 4 of the **Policy**.

d) If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then the **Insured**:

i. cannot (subject to Section 7.7) object to the settlement; and

ii. will be required to pay any applicable **Excess** as soon as reasonably possible.

7.9 Payments to settle potential claims

Any money **We** pay to settle, and/or investigate anything which might give rise to a claim or **Occurrence**, is taken to be a payment:

a) to settle a claim or **Occurrence**; and

b) for the purpose of calculating the total of all claims or **Occurrences** under this **Policy**.

7.10 Recovering money from employees

We must not recover any amount paid out in respect of a claim or **Occurrence** under this **Policy** from any employee unless the claim or **Occurrence** arose from dishonest, fraudulent, criminal or malicious acts or omissions of the employee.

7.11 Offsetting of costs and expenses

If **We** incur costs or expenses above **Our** liability under the **Policy** for Supplementary Payments as specified in Section of the **Policy**, then the **Insured** will be required to pay whatever amount is above that liability as soon as reasonably possible after **We** ask for it.

We can offset that payment due from the **Insured** against (and deduct that amount from) any amount **We** are required to pay to or on behalf of the **Insured** under this **Policy**.

7.12 Loss prevention

The **Insured** must as a condition to cover under this **Policy**:

a) take all reasonable steps to:

   i. prevent **Personal Injury**, **Property Damage** or **Advertising Liability**;

   ii. prevent the manufacture, sale or supply of defective products; and

   iii. comply and ensure that the **Insured's** workers, servants and agents comply with all relevant Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for the safety of persons and property;

b) at the **Insured's** own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the **Insured** has knowledge of or has reason to suspect.

7.13 Severability and non-imputation

For the sake of determining cover under this **Policy**:

a) the **Proposal** shall be construed to be a separate application for cover by the **Policyholder** and by each natural person covered by the **Policy**, and no statement or representation in or with respect to the **Proposal** by such person shall be imputed to any other natural person covered by the **Policy**; and

b) knowledge possessed by and/or conduct of one natural person covered by the **Policy** shall not be imputed to any other natural person covered by the **Policy**; and

c) any knowledge possessed by and/or conduct of any past or present principal, company secretary, chief executive officer, chief operating officer, chief financial officer, chief risk officer, in-house general counsel, or any person who signed the declaration or proposal form in connection with this **Policy** or any policy of which this **Policy** is a renewal or replacement, shall be imputed to the **Policyholder**.

7.14 Allocation

a) To the extent that a claim or **Occurrence** comprises **Covered Matters** and **Uncovered Matters**, **We** will use best endeavours to agree a fair allocation between **Covered Matters** and **Uncovered Matters** having regard to the relative legal and financial exposure attributable to the **Covered Matters** and **Uncovered Matters**.

b) This allocation will apply to Supplementary Payments as specified in Section 4 of the **Policy**.

c) Any dispute between **Us** and the **Policyholder** on the allocation will be resolved by a Senior Counsel that **We** and the **Policyholder** both agree to instruct or in the absence of agreement, as appointed by the President of the Bar Association in the state or territory of the first address of the **Policyholder** shown on the **Schedule** or if no address is shown there, as shown on the **Proposal**.

d) Any allocation between **Covered Matters** and **Uncovered Matters** as determined by Senior Counsel will apply retrospectively to the Supplementary Payments as specified in Section 4 of the **Policy**, paid by **Us** or the **Policyholder** notwithstanding any prior payment on a different basis, unless otherwise agreed.

e) The cost of Senior Counsel's opinion will form part of the Supplementary Payments as specified in Section 4 of the **Policy**.

7.15 Payment in Australian dollars in Australia

All premiums and claims must be paid in Australian dollars in Australia.

7.16 Cross liabilities

Where more than one party comprises the **Insured** each of the parties shall be considered as a separate and distinct unit and the word **Insured** shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of **Our** liability under this **Policy** in respect of any **Occurrence** or **Period of Insurance**.

7.17 Other insurances

This **Policy** shall apply in excess of and shall not contribute to any policy arranged by any other party which has been endorsed to name the **Insured** as a beneficiary of cover under that policy and where the **Insured** is a non-contracting party to that policy.

The **Policyholder** must as soon as reasonably possible advise **Us** in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, **Covered** by this **Policy**.

7.18 Insurance arranged by principal

If the **Insured** enters into an agreement with any other party (**Principal**) pursuant to which the **Principal** has agreed to provide a policy of insurance which is intended to indemnify the **Insured** for any loss or liability arising out of the performance of the said agreement then **We** will (subject to the terms and conditions of this **Policy**) only indemnify the **Insured** for loss or liability not covered by the policy of insurance provided by the Principal.

Cancelling the policy

7.19 The policyholder can cancel the policy

The **Policyholder** is entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**. **We** will be entitled to retain premium for the pro-rata 'time on risk' plus applicable statutory charges.

7.20 We can cancel the policy

a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984 (Cth), by giving notice in writing to the **Policyholder** of the date from which cancellation is to take effect;

b) **We** may deliver this notice to the **Policyholder** personally, or post it by certified mail (to the **Policyholder's** broker or to the address the **Policyholder** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Policyholder** received the notice;

7.21 Refund of premium

a) After cancellation pursuant to Sections 7.19 or 7.20 above, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties.

b) Notwithstanding Sections 7.19 or 7.20 above, when the **Premium** is subject to adjustment, cancellation will not affect the **Insured's** obligation to supply such information as **We** may reasonably require for the adjustment of the **Premium**. Cancellation will not affect the **Insured's** obligations to pay the amount of adjustment applicable up to the date of cancellation.

Other matters

7.22 Material change in the risk

The **Insured** must as soon as reasonably possible provide **Us** with written notice of:

a) every change which materially varies any of the facts or circumstances existing at the commencement of this **Policy** that comes to the **Insured's** knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the **Insured's** knowledge; and

b) if the **Insured** does not provide such notification before the happening of an **Occurrence** giving rise to a claim under this **Policy** then, subject to the Insurance Contracts Act 1984 (Cth), **We** may refuse to pay a claim, either in whole or in part.

7.23 Authority to accept notices and to give instructions

The **Policyholders** listed in the **Schedule** are appointed individually and jointly as agent of each **Insured** in all matters relating to this **Policy**, and to claims or **Occurrences**, covered by the **Policy**.

In particular (but without limitation) the **Policyholders** listed in the **Schedule** are agents for the following purposes to:

a) give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and

b) accept endorsements or other notices provided for in this **Policy**; and

c) give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and

d) consent to any settlement **We** recommend; and

e) do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for investigating, defending or settling claims; and

f) give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

7.24 Inspection and premium adjustment

We are permitted but not obligated to inspect the **Insured's** property and operations at any reasonable time and place. Neither **Our** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property or operations are safe. **We** may examine and audit the **Insured's** books and records at any reasonable time and place during the **Period of Insurance** and extensions thereof and within 3 years after the final termination of this **Policy**, as far as they relate to the subject matter insured.

If the first or renewal premium for the **Policy** or part thereof has been calculated on estimates, for example relating to the activities and turnover of the business, furnished by the **Insured**, then the **Insured** is required to keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow **Us** to inspect such records. The **Named Insured** shall within 30 days after the expiry of each **Period of Insurance** furnish to **Us** such particulars and information as **We** may reasonably require. The premium for such period will thereupon be adjusted and any difference paid or allowed to the **Insured** as the case may be subject to receipt and retention of any minimum premium charged by **Us**.

7.25 Insurance Contracts Act

Nothing contained in this **Policy** shall be construed to reduce or waive either the **Insured's** or **Our** privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth) as amended.

7.26 Agreement limiting rights

If the **Insured** has entered into any agreement which excludes or limits a right which the **Insured** may have against any party, then, subject to the Insurance Contracts Act 1984 (Cth), **We** will not be liable for any claim under the **Policy** to the extent of such exclusion or limitation.

7.27 Law of the policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

7.28 Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** signed by one of **Our** officers.

7.29 Goods and Services Tax

a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be deemed to be net of **Our** entitlement to the Input Tax Credit.

b) Where and to the extent that the **Policyholder** is entitled to claim an Input Tax Credit for a payment required to be made by the **Policyholder** as an **Excess**, then the amount of the **Excess** shall be net of the entitlement of the **Policyholder** to the Input Tax Credit.

c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Policyholder** is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition.

d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Policyholder** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

Section 8
Words with special meaning

8.1 Advertising Liability

a) Defamation;

b) Infringement of copyright of or passing off of a title or slogan;

c) Unfair competition, piracy or idea, concept or design misappropriation contrary to an implied contract; or

d) Invasion of privacy,

arising from any advertisement, publicity article, broadcast or telecast and caused by or arising out of advertising activities conducted by the **Insured** or on behalf of the **Insured**.

8.2 Aircraft

Any vessel, craft or thing made or intended to fly or move in or throughout the atmosphere or space, other than:

a) model aircraft; and

b) unmanned tethered balloons used for advertising purposes.

8.3 Business

The business stated in the **Schedule** and shall include the following activities:

a) the ownership and occupation of premises by the **Insured**;

b) the provision of any sponsorship, charitable donations, or attendance at any charitable event or gala;

c) canteen, social, sports, welfare, child care services or other activities for the **Insured's** employees;

d) first aid, fire and ambulance services provided by the **Insured** for the **Insured's** own internal purposes;

e) private work undertaken by employees for any director, partner, officer or executive of the **Insured**.

8.4 Covered Matters

That part of a claim made against or sought from the **Insured** for which **We** provide cover.

8.5 Electronic Data

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

8.6 Excess

The amount shown in the **Schedule** and payable by the **Insured** in respect to each **Occurrence** and inclusive of Supplementary Payments specified in Section 4 of the **Policy**.

8.7 Insured

Each of the following is insured under this **Policy** to the extent set forth below:

a) the **Policyholder**;

b) all subsidiary companies (now or hereafter constituted) of the **Policyholder** whose place of incorporation is within Australia and whose business falls within the definition of **Business**;

c) any director, executive officer, employee, partner or shareholder of the **Policyholder** or of any company designated in paragraph b) above but only while acting within the scope of their duties in such capacity;

d) any party with whom the **Policyholder** (or any company designated in paragraph b) above) has entered into an agreement for the purpose of the **Business**, but only for **Occurrences** for which the **Policyholder** above would be liable in the absence of the agreement and only to the extent that the agreement requires the **Policyholder** to indemnify that party in relation to the **Occurrence**;

e) any incorporated or unincorporated association or organisation including their office bearers and members organised by the **Insured** (other than an **Insured** designated in paragraph d) above) or their employees with the consent of the **Insured** for the purpose of providing canteen, social, sports, welfare and or child care organisations or first aid, medical, fire or ambulance services for such employees.

8.8 North America

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.

8.9 Occurrence

An event including continuous or repeated exposure to substantially the same general conditions, which causes **Personal Injury** or **Property Damage** or **Advertising Liability** none of which is expected or intended from the standpoint of the **Insured**.

8.10 Period of Insurance

The duration of this **Policy** as stated in the **Schedule**.

8.11 Personal Injury

a) Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;

b) False arrest, false imprisonment, malicious prosecution and humiliation;

c) Defamation, unless arising out of **Advertising Liability**

d) Wrongful entry or wrongful eviction or other invasion of the right of private occupancy;

e) Assault and battery not committed by or at the direction of the **Insured** unless committed for the purpose of preventing or eliminating danger to persons or property,

which occurs during the **Period of Insurance**.

8.12 Policy

The insurance policy made up of:

a) all terms, conditions and exclusions contained herein;

b) the **Schedule**; and

c) any endorsements attaching to and forming part of this policy document, either at inception or during the **Period of Insurance**.

8.13 Policy Limit

The amount(s) specified as such in the **Schedule** as the 'Sum Insured'.

8.14 Policyholder

The entity or natural person specified in the **Schedule**.

8.15 Policyholder's Products

Anything (after it has ceased to be in the possession or under the control of the **Insured**), which is or is deemed to have been manufactured, grown, extracted, produced, processed, imported, exported, constructed, assembled, erected, installed, repaired, serviced, renovated, treated, sold supplied or distributed by or on behalf of the **Insured** including any discontinued products, labels packaging or containers, the design specification or formula of any products and including directions and instructions, advice given or omitted to be given in connection with such products.

This does not include food and beverages:

a) sold or supplied by or on behalf of the **Insured** from any canteen or vending machine primarily for the use of the **Insured's** employees; and

b) served to employees or guests for consumption on any **Insured's** premises.

8.16 Pollutants

Any solid, liquid, gas or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

8.17 Premium

'Total Payable Premium' as stated in the **Schedule**.

8.18 Products Liability

Personal Injury, **Property Damage** or **Advertising Liability** happening during the **Period of Insurance** within the Geographical Limits as stated in Section 5 as a result of an **Occurrence** and arising out of the **Policyholder's Products**.

8.19 Property Damage

a) Physical loss, destruction or damage to tangible property, including subsequent loss of use of such property; or

b) Loss of use of tangible property that has not been physically damaged or destroyed, provided such loss of use is caused by physical damage to, loss of, or destruction of other tangible property.

8.20 Proposal

The written **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

8.21 Public Liability

Liability covered by this **Policy** but does not include **Products Liability**.

8.22 Schedule

The schedule attached to this **Policy** or any schedule subsequently substituted during the **Period of Insurance** and duly signed by one of **Our** officers.

8.23 Terrorism

Any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

a) involves violence against one or more persons; or

b) involves damage to property; or

c) endangers life other than that of the person committing the action; or

d) creates a risk to health or safety of the public or a section of the public; or

e) is designed to interfere with or to disrupt an electronic system

8.24 Tool of Trade

A **Vehicle** that has tools, implements, machinery or plant attached to any **Vehicle** and is being used by the **Insured** at any worksite or **Insured** premises. Tool of trade does not include any **Vehicle** while travelling to or from a worksite or **Vehicles** that are used to carry goods to or from any premises.

8.25 Uncovered Matters

That part of a claim made against or sought from the **Insured** for which **We** do not provide cover.

8.26 Vehicle

Any type of machine on wheels, self laid tracks or skis made or intended to be propelled other than by manual or animal power and any trailer or attachment while attached to or used in conjunction with any such machine.

8.27 Watercraft

Any vessel, craft or thing made or intended to float on or in or travel on or through or under water other than model boats.

8.28 We or Us or Our

CGU Australia Pty Ltd ABN 62 004 478 960 AFSL 700014 trading as CGU Insurance.

CONTACT DETAILS

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