

# **Combined**

## **Professional Indemnity and**

## **Public & Products Liability**

### **Insurance Wording**

Please read the following notices. They are for your information and do not form part of the insurance contract. They do not impose contractual obligations on you or create contractual rights.

#### **Your Duty of Disclosure**

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

#### **If you do not tell us something**

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

#### **Claims Made Policy**

Insuring Clause 1.1 is issued on a 'claims made and notified' basis. This means that the Insuring Clause responds to:

- claims first made against you during the Period of Insurance and notified to the insurer during the Period of Insurance, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against you; and
- written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify, are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the Period of Insurance expiring. If you give written notification of facts the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, s40(3) of the Insurance Contracts Act 1984 is set out below:

'Where the insured gave notice in writing to the insurer of facts that might give rise to claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim when made by reason only that it was made after the expiration of the period of the insurance cover provided by the contract.'

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

### **Average provision**

If your policy provides for 'Costs in Addition' to the limit of liability and if a payment in excess of the limit of liability available under your policy has to be made to dispose of a claim, the insurer's liability for costs and expenses incurred with its consent shall be such proportion thereof as the amount of reimbursement available under this policy bears to the amount paid to dispose of the claim payments.

### **Subrogation waiver**

Our policy contains a provision that has the effect of excluding or limiting our liability in respect of a liability incurred solely by reason of the insured entering into a deed or agreement excluding, limiting or delaying the legal rights of recovery against another.

### **Privacy**

FTA Insurance (**FTA**) complies with the Privacy Act 1988 and the Australian Privacy Principles therein. If we disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

### **Agent of the insurer**

In effecting this insurance contract FTA will be acting under an authority given to it by the insurer to effect the contract and FTA will be effecting the contract as agent of the insurer and not of the Insured.

### **Sanctions**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### **Purpose for collection of information**

FTA is committed to compliance with the Privacy Act 1988 (Cth). We use your personal information to assess the risk of and provide insurance, and assess and manage claims.

We provide your information to the insurers we represent when we receive a submission from your broker, decline, quote or issue and administer your insurance. We may also provide your information to your broker and our contracted third party service providers (e.g. claims management companies, auditors and solicitors), but will take all reasonable steps to ensure that they comply with the Privacy Act.

Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint. You can obtain a copy from our Privacy Officer by telephone 02 9003 1660, email [quotes@FTAINsurance.com.au](mailto:quotes@FTAINsurance.com.au) or by visiting our website [www.FTAinsurance.com.au](http://www.FTAinsurance.com.au).

By providing us with your personal information, you consent to its collection and use as outlined above and in our Privacy Policy.

### **Contact Details:**

FTA Insurance  
PO Box H344  
Australia Square NSW 1215

Ph: 02 9003 1660  
Email: [quotes@FTAINsurance.com.au](mailto:quotes@FTAINsurance.com.au)  
Web site: [www.FTAinsurance.com.au](http://www.FTAinsurance.com.au)

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# Introduction

This policy is a contract between the Insured and Us. It is arranged through FTA Insurance on behalf of Certain Underwriters at Lloyd's.

This policy consists of this document, the Schedule and Endorsements, if any, all of which are a single document and are to be read as one contract. In this policy, certain words or phrases are specially defined. In deciding to accept this policy and in setting the terms and premium We have relied on the information which You have provided to Us.

We will, in consideration of the payment of the premium, cover the Insured, subject to the terms and conditions of this policy for the Period of Insurance or any subsequent period for which We agree to accept payment of premium.

The Insured should read this policy carefully and make sure that it meets their needs. If any corrections are necessary, the Insured should contact the broker through whom this policy was arranged.

The Insured should keep this policy in a safe place – the Insured may need to refer to it if they have to make a claim.

## Insuring Clauses

### 1.1 Professional Indemnity Insuring Clause

We will pay, up to the Limit of Liability on behalf of the Insured, any civil liability for compensation (which includes the claimant's legal costs and expenses) arising from any Claim first made against the Insured during the Period of Insurance resulting from the conduct of the Insured Activities.

### 1.2 Public Liability Insuring Clause

We will pay, up to the Limit of Liability on behalf of the Insured, any civil liability for compensation arising from any claim for;

- a) Personal Injury to any person; or
- b) Property Damage; or
- c) Advertising Injury;

first happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence and in connection with the Insured Activities.

### 1.3 Products Liability Insuring Clause

We will pay, up to the Limit of Liability on behalf of the Insured, any civil liability for compensation arising from any claim for:

- a) Personal Injury to any person; or
- b) Property Damage;

first happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence and caused by any Product.

### 1.4 Defence Costs

We will also pay on behalf of the Insured any Defence Costs where such Defence Costs have been incurred with Our prior written consent.

Defence Costs are payable in addition to the Limit of Liability, provided always that if the Insured's liability for any Claim (including claimant's legal costs and expenses) is for an amount greater than the amount of the Limit of Liability, then Our liability for such Defence Costs will be in the same proportion as the Limit of Liability bears to the amount required to dispose of that Claim (including the claimant's legal costs and expenses).

## Included Covers

We will provide the following cover as part of Insuring Clause 1.1 on the basis that:

- a) the cover provided by each Included Cover is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated) or endorsements thereto; and
- b) the inclusion of any Included Cover will not increase the Limit of Liability. Where a limit is stated in respect of any Included Cover, such limit will be a sub-limit, in the aggregate for the policy period and form part of and not be in addition to the Limit of Liability.

### **Included Cover applicable to Insuring Clause 1.1**

#### **2.1 Defamation, Libel and Slander**

Insuring Clause 1.1 provides cover for any Claim made as a result of any inadvertent defamation, libel or slander by the Insured.

#### **2.2 Dishonesty of an Insured**

Insuring Clause 1.1 provides cover for any Claim due to any dishonest, fraudulent, criminal or malicious act or omission of an Insured, provided that:

- 2.2.1 We will not pay on behalf of the Insured any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- 2.2.2 We will not cover the Insured for any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;
- 2.2.3 We will not cover any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.2.4 We will not cover the Insured where all principals, partners or directors of the Named Insured are persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.2.5 We will offset from any amount payable any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person;
- 2.2.6 We will only be liable to pay on behalf of the Insured for the balance of loss sustained in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 2.2.7 Dual Sign Off must have been a requirement for any withdrawal of funds from any relevant bank or trust account at the time the dishonest or fraudulent act or omission occurred;
- 2.2.8 if the dishonest or fraudulent act or omission is in relation to a trust account then the trust account must have been independently audited within 12 months of the time of each dishonest or fraudulent act or omission; and
- 2.2.9 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

“Dual Sign-Off” in this Included Cover means that any cheque payment, cash withdrawal or electronic money transfer receives prior approval by at least two approved signatories and that the person reconciling the Insured’s bank statements is a different person to those allowed to authorise withdrawals on those bank accounts.

### **2.3 Fiduciary Duty**

Insuring Clause 1.1 provides cover for any Claim as a result of a breach of fiduciary duty owed by the Insured to a client or customer of the Insured.

### **2.4 Competition and Consumer Act and other Legislation**

Insuring Clause 1.1 provides cover for any Claim which arises out of conduct in contravention of the *Competition and Consumer Act 2010 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)*, *Corporations Act 2001 (Cth)*, *National Consumer Credit Protection Act 2009 (Cth)* or any *State or Territory Fair Trading Act* but only where such conduct:

2.4.1 constitutes a contravention of such statute because it:

- a) is misleading or deceptive or likely to mislead or deceive;
- b) is the making of a false or misleading representation;
- c) is unconscionable; or
- d) is in breach of a warranty implied into a contract for the provision of services by any of the above Acts; and

2.4.2 is not intentional.

### **2.5 Infringement of Intellectual Property Rights**

Insuring Clause 1.1 provides cover for any Claim first made against the Insured during the Period of Insurance as a result of any inadvertent infringement or alleged inadvertent infringement of any intellectual property (although not including patents) committed in the provision of the Insured's Insured Activities.

### **2.6 Privacy & Confidentiality**

Insuring Clause 1.1 provides cover for any Claim against the Insured in respect of any unintentional breach of any duty of privacy or confidentiality.

### **2.7 Vicarious Liability**

Insuring Clause 1.1 provides cover for any Claim against the Insured in respect of the Insured's civil liability arising out any act, error or omission of any appointed sub-consultant in the conduct of the Insured's Insured Activities.

## Included Additional Covers

We will provide the following cover on the basis that:

- a) the cover provided by each Additional Cover is subject to the Schedule, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated) or endorsements thereto; and
- b) the inclusion of any Additional Cover will not increase the Limit of Liability. Where a limit is stated in respect of any Additional Cover, such limit will be a sub-limit, in the aggregate for the policy period and form part of and not be in addition to the Limit of Liability.

### **Included Additional Cover applicable to Insuring Clause 1.1**

The following Cover is applicable to any Claim covered by Insuring Clause 1.1:

#### **2.8 Reinstatement of the Limit of Liability**

If the Limit of Liability for Insuring Clause 1.1 is partially reduced or exhausted by any Claim, Claims and/or Defence Costs then We will reinstate the Limit of Liability for any subsequent Claims covered by Insuring Clause 1.1 and Defence Costs covered by Insuring Clause 1.4, provided always that:

2.8.1 such reinstatement shall only apply to subsequent Claims and Defence Costs that are completely unrelated or unconnected to the Claim, Claims and/or Defence Costs that reduced or exhausted the Limit of Liability; and

2.8.2 We will only provide such reinstatement if the limit of liability available under any policy or policies in excess of this policy has or have been exhausted;

2.8.3 We will be liable for in the aggregate no more than twice the Limit of Liability in respect of all Claims and Defence Costs (other than Defence Costs where cover for that clause is stated to be “in addition” in which case We will pay as per Insuring Clause 1.4).

#### **2.9 Continuous Coverage**

We will cover the Insured pursuant to Insuring Clause 1.1 for any Claim arising from any fact, matter or circumstance known to the Insured, prior to the Period of Insurance, and which the Insured knew, or a reasonable person in the Insured’s profession could, in the circumstances, be expected to know, might give rise to a Claim against the Insured, provided always that:

2.9.1 We were the professional indemnity insurer of the Named Insured when the Named Insured first became aware of such fact, matter or circumstance; and

2.9.2 We continued without interruption to be the professional indemnity insurer of the Named Insured from the time mentioned in paragraph 2.9.1 above up until the time the Named Insured lodges a claim under this policy;

2.9.3 had We been notified by the Named Insured of such fact, matter or circumstance when the Insured first became aware of it, the Named Insured would have been covered (and not excluded) under the policy in force at that time but is not now entitled to be covered by that policy solely because the Named Insured did not notify the fact, matter or circumstance;

2.9.4 there is an absence of fraudulent noncompliance with any Insured’s duty of disclosure and an absence of fraudulent misrepresentation by any Insured in respect of such fact, matter or circumstance;

2.9.5 We may reduce Our liability to the extent of any prejudice We may suffer in connection with the Insured’s failure to notify the fact, matter or circumstance;



2.9.6 the Limit of Liability provided for any Claim covered by this Additional Cover is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.9.3 above, or under this policy. The terms of this policy otherwise apply.

The cover provided by this Additional Cover is not subject to Exclusion 6.20.2.

### **2.10 Extended Reporting Period**

In the event that this policy is not renewed then the cover provided by Insuring Clause 1.1 shall be extended to any Claim first made against the Insured and notified to Us within the Extended Reporting Period, provided always that:

2.10.1 cover afforded under this Additional Cover will not reinstate or increase the Limit of Liability or extend the Period of Insurance; and

2.10.2 cover afforded under this Additional Cover will only apply to an act, error or omission committed by the Insured prior to the end of the Period of Insurance.

“Extended Reporting Period” means the period commencing immediately following the end of the Period of Insurance and finishing sixty (60) days thereafter or when the Insured first effects another professional indemnity insurance policy (whichever is the earlier).

The cover provided by this Additional Cover does not apply if this policy is cancelled.

### **2.11 Sixty day reporting period**

In relation to Insuring Clause 1.1 which is on a “Claims Made” basis the Insured may continue to notify Us of Claims up to sixty (60) days after the expiry of the Period of Insurance, but only Claims first made against the Insured during the Period of Insurance and based on any act, error or omission committed or alleged to have been committed prior to expiry of the Period of Insurance.

Any notification to Us during this sixty (60) day reporting period will be deemed to have been first notified to Us during the Period of Insurance.

### **2.12 Mitigation Costs**

We will pay to or on behalf of the Insured any reasonable and necessary 3<sup>rd</sup> party costs (excluding costs from a related 3<sup>rd</sup> party) incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a Claim under Insuring Clause 1.1, provided that:

2.12.1 the costs arise from a fact, matter or circumstance first discovered by the Insured during the Period of Insurance; and

2.12.2 such fact, matter or circumstance is notified to Us during the Period of Insurance; and

2.12.3 prior to the Insured incurring any such mitigation costs or expenses We had given written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such mitigation costs or expenses; and

2.12.4 no admission of liability (whether by word, conduct or otherwise) is made by the Insured;

2.12.5 We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this Additional Cover; and

2.12.6 We will not pay for any of the Insured’s own internal costs, without limiting the foregoing this includes loss or diminution of the Insured’s profit, bonus, incentive payment or opportunity cost or the costs of employees, Sub-Consultants that would be covered by this policy or directors; and

2.12.7 cover afforded under this Additional Cover will not include Defence Costs.

The onus of proof of proving entitlement to cover under this Additional Cover is on the Insured.

The maximum aggregate amount payable under this Additional Cover is \$100,000.



### **2.13 Appointed Sub-Consultants**

We will cover any Sub-Consultant, who did not hold an insurance policy at the time the Claim was made against them, as if they were an Insured under this policy, provided that cover afforded under this Additional Cover will only apply in respect of an act, error or omission in breach of the professional duty owed by the Sub-Consultant in the conduct of the Insured's Insured Activities.

The Sub-Consultant shall be subject to all the terms, condition and exclusions of this Policy as if they were an Insured.

### **Included Additional Cover applicable to Insuring Clause 1.2**

The following included additional cover is applicable to any Claim covered by Insuring Clause 1.2:

### **2.14 Movement of Obstructing Vehicles**

Exclusion 6.32 shall not apply to liability caused by or arising from any vehicle (not owned by or hired by or lent to the Insured) being driven by the Insured or by any employee with the Insured's permission whilst such vehicle is being moved for the purpose of allowing free movement of any vehicles or pedestrians.

Provided that:

- a) movements are limited to vehicles parked on or obstructing the Insured's premises or any site at which the Insured is working; and
- b) the vehicle causing obstruction will not be driven by any person unless such person is licensed and competent to drive the vehicle; and
- c) the vehicle causing obstruction is driven by use of the owner's ignition key; and
- d) We shall not provide reimbursement for liability;
  - (i) in respect of damage to such vehicle.
  - (ii) in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle.

### **2.15 Overseas Personal Liability**

We will reimburse:

- a) where the Named Insured is a natural person, the Named Insured; or
- b) at the request of the Named Insured;
  - i. any director, officer, partner or employee of the Named Insured normally resident in Australia; or
  - ii. any spouse or child of the persons stated in (a) or (b)(i) above who are normally resident in Australia and accompanying such persons

in respect of liability incurred by such persons in a personal capacity in connection with an event occurring in a country outside of the Territorial Limits whilst on a temporary visit to such country in connection with the Insured Activities.

In addition, We will indemnify the Named Insured for any liability arising out of any event for which the persons referred to at (b)(i) or (b)(ii) are or would, at the request of the Named Insured, be entitled to be indemnified under this Additional Cover.

Provided that:

2.15.1 any person entitled to reimbursement under this Additional Cover shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this policy insofar as they can apply;

2.15.2 nothing in this Additional Cover shall increase Our liability to pay any amount exceeding the Limit of Liability regardless of the number of persons claiming to be indemnified;

2.15.3 We shall not provide reimbursement for:

- a) any contractual liability but only to the extent to which it would not have attached in the absence of such contract or agreement;
- b) liability for which reimbursement is provided by any other insurance;
- c) liability in respect of Property Damage to property belonging to or in the custody or under the control of any person entitled to reimbursement under this Additional Cover;
- d) liability in respect of Personal Injury to any person entitled to reimbursement under this Additional Cover;
- e) liability caused by or arising from:
  - i. the ownership or occupation of land or buildings;
  - ii. the carrying on of any Insured Activities, profession, trade or employment;
  - iii. the ownership possession or use of animals other than horses or domestic dogs or cats.

### **Included Additional Cover applicable to Insuring Clauses 1.2 and 1.3**

The following included additional cover is applicable to any Claim covered by Insuring Clauses 1.2 or 1.3:

#### **2.16 Indemnity to Other Persons**

We will also indemnify as if a separate policy had been issued to each:

2.16.1 the legal personal representatives of the Insured or any other person entitled to reimbursement under this policy but only in respect of liability incurred by the Insured;

2.16.2 any owner of plant hired to the Insured but only to the extent required by the conditions of any written contract or agreement of hire;

provided always that:

- a) any persons specified above shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this policy insofar as they can apply; and
- b) nothing in this Additional Cover shall increase the liability of Us to pay any amount exceeding the Limit of Liability regardless of the number of persons claiming to be indemnified.

#### **2.17 Supplementary Payments**

We will also:

2.17.1 pay

- a) pre-judgment interest awarded against the Insured on that part of the judgment payable by Us; and
- b) all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.

2.17.2 pay premiums on:

- a) bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this policy but We shall have no obligation to apply for or furnish any such bond.
- b) appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any such bonds and/or security for costs.

2.17.3 pay expenses incurred by the Insured for:

- a) rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).
- b) temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.
- c) purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the Insured must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

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

### **Included Additional Cover applicable to all Insuring Clauses**

The following Additional Cover is applicable to any Claim covered by any Insuring Clause:

#### **2.18 Public Relations Expenses**

Where a Claim has been made against the Insured for which cover is available (and not excluded) under the Insuring Clauses and in the reasonable belief of the Insured the Insured's reputation has been or will be significantly impaired, then We will reimburse the Insured for any reasonable and necessary costs and expenses of a public relations consultant retained by the Insured with Our prior written consent to design and implement a reasonable and necessary publicity campaign approved by Us with the object of preventing or mitigating damage to the reputation of the Insured in consequence of such Claim.

The maximum aggregate amount payable under this Additional Cover is \$250,000.

An Excess is payable by the Insured for any claim under this Additional Cover and is costs inclusive.

#### **2.19 Compensatory Fines and Penalties**

We will pay to or on behalf of the Insured any Fines or Penalties resulting from any Claim directly arising out of a breach of professional services by the Insured in the provision of the Insured Activities and first made against the Insured during the Period of Insurance, provided that:

2.19.1 the conduct giving rise to the Claim was not deliberate, wilful or reckless; and

2.19.2 indemnification is permitted at law.

We will not cover the Insured for Fines and Penalties imposed in connection with any requirement to pay taxes, rates, duties, levies, charges, fees or other revenue charge or impost.

The maximum aggregate amount payable under the policy in respect of all Fines and Penalties and Defence Costs in connection with such Claims is \$500,000 in the aggregate.

#### **2.20 Severability and Cross Liabilities**

Where the Named Insured comprises more than one entity, any conduct on the part of a Named Insured whereby such Named Insured:

2.20.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or

2.20.2 made a misrepresentation to Us before this contract of insurance was entered into; will not prejudice the right of any other Named Insured to cover as may be provided by this policy, provided always that:

- a) such other Named Insured is entirely innocent of and had no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Named Insured;
- b) such other Named Insured will, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct; and
- c) enquiry has been made by each Named Insured, before the contract of insurance was entered into of each other Named Insured and persons who make up the Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 (Cth).

### **2.21 Emergency Defence Costs**

We will indemnify the Insured for any Defence Costs which are incurred pursuant to Insuring Clause 1.4, prior to obtaining Our consent, provided always that:

2.21.1 such Defence Costs are incurred as a result of a sudden, urgent and unexpected occurrence or occasion requiring immediate action and it would not be considered reasonable in such a situation to obtain Our consent to the incurring of Defence Costs;

2.21.2 Our written consent is obtained within thirty (30) days of the first of such Defence Costs being incurred; and

2.21.3 if We subsequently refuse to cover the Claim to which the Defence Costs relate, the Insured must reimburse Us for any Defence Costs that We have paid.

The maximum aggregate amount payable under this Additional Cover is \$100,000.

### **2.22 Claim Preparation Costs**

We will pay to or on behalf of the Insured reasonable and necessary costs and expenses incurred with Our prior written consent for the preparation of any claim by the Insured under this policy that is covered under this policy, provided that:

2.22.1 cover afforded under this Additional Cover will not include any Defence Costs or an Insured's own time; and

2.22.2 the maximum aggregate amount payable under this Additional Cover is \$25,000.

### **2.23 Loss of or Damage to Documents**

We will, in the event of loss of or damage to Documents occurring in connection with the Insured Activities, pay to or on behalf of the Insured its civil liability for compensation and claimant's costs and expenses in respect of any Claim resulting from such loss or damage.

Provided that:

(a) such loss or damage is sustained and notified to Us during the Period of Insurance while the Documents are either in transit or in the custody of the Insured or of any person to whom the Insured has entrusted them in the course of the normal conduct of the Insured Activities;

(b) where the Documents are in electronic format, the Insured or any person to whom the Insured has entrusted them, have in place sufficient and proper procedures for the security and the daily back-up of the Documents;

(c) We will not be liable in respect of loss or damage caused by fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause.

This cover is subject to Exclusion 6.25 Cyber.

The maximum aggregate amount payable under this Additional Cover is \$500,000.

## **2.24 Newly Created or Acquired Subsidiaries**

We will cover, in the same manner and to the same extent as the Named Insured, any entity or subsidiary acquired or created by the Named Insured during the Period of Insurance, provided that:

2.24.1 the period applicable to such cover will be the period commencing on the date of such acquisition or creation and expiring sixty days after that date or on the expiry date of the Period of Insurance (whichever is the earlier);

2.24.2 the retroactive date applicable to such cover will be the date of acquisition or creation of the entity or subsidiary; and

2.24.3 the Claim arises out of the exercise and conduct of the entity or subsidiary's Insured Activities which is the same as or substantially the same to the Named Insured's Insured Activities and its total annual income is not greater than 25% of the Insured's income for the most recent financial year as disclosed by the Insured when applying for insurance.

## **2.25 Costs of Court Attendance**

In the event of any of the under-mentioned persons are required to attend court as a witness in connection with any Claim in respect of which the Insured is covered under this policy, We will pay to the Named Insured court attendance costs at the following rates per day for each day on which attendance is required:

2.25.1 any principal, partner or director of the Named Insured - \$1,000.00; and

2.25.2 any employee of the Named Insured - \$500.00.

## **2.26 Inquiry Costs**

We will pay to or on behalf of the Insured (but not a Sub-Consultant of the Insured) any reasonable and necessary legal costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) for representation of the Insured before any Inquiry Body that the Insured first became aware of and was first initiated and notified to us during the Period of Insurance arising directly out of the provision of the Named Insured's Insured Activities.

The maximum aggregate amount payable under this Additional Cover is \$250,000.

## **2.27 Run-Off Cover**

We agree that, in the event that a Named Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity, then the cover provided under Insuring Clause 1.1 with respect to an Insured will continue until the expiry of the Period of Insurance or cancellation of this policy, whichever is earlier, provided always that such cover will only apply in respect of Claims arising out of acts, errors or omissions occurring prior to the date on which such Named Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

## **2.28 Estates and Legal Representatives**

In the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of the Insured, We will cover the estate, heirs, legal representatives or assignees of the Insured in respect of any civil liability of the Insured to the extent that the Insured would have been covered by the Insuring Clauses if the Insured was alive, had capacity or was not insolvent or bankrupt provided always that such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply.

### **2.29 Legal Panel**

The Insured may contact Us to access Our legal panel during normal business hours for one complimentary session up to one (1) hour of verbal legal advice in relation to matters which might be covered under this policy but not in relation to the scope of cover provided by this policy or claims, disputes, or complaints against Us.

The cover provided by this Additional Cover is not subject to Insuring Clauses.

### **2.30 Contractual Liability**

The Insuring Clauses provide cover for any Claim against the Insured in respect of any Contractual Liability in the conduct of the Insured Activities. However, Exclusion 6.11 limits the cover provided for Contractual Liability in certain circumstances.

### **2.31 Excess reduction**

If the Excess is specified as 'Inclusive of Costs' in the Schedule, and the defence, investigation or settlement of any Claim is settled or disposed of without incurring any Defence Costs, then:

2.31.1 if the Excess for the Claim is less than \$10,000, the Insured will not have to pay the Excess; or

2.31.2 if the Excess for the Claim is \$10,000 or greater but less than \$50,000, the Insured will pay the Excess less 10%,

but only where the Insured has in all material respects complied with the Insured's obligations under this policy.

### **2.32 Advancement of costs**

We will advance Defence Costs and Inquiry Costs incurred by Us or the Insured with Our prior written consent, as they are incurred and prior to final adjudication of a Claim.

We will not refuse to advance Defence Costs or Inquiry Costs by reason only that We consider that conduct referred to in Exclusion 6.15 Fraud, Dishonest, Criminal or Intentional Loss Damage or Injury has occurred, until such conduct is established by a formal written admission by the relevant Insured or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the Insurer).

If and to the extent that the Insured is not entitled to coverage under the terms and conditions of this policy, then We will cease to advance such costs and any amounts previously advanced shall be repaid to Us.

### **2.33 Privacy breach costs**

We will pay to or on behalf of the Insured the reasonable direct costs of notifying individuals or corporations of a Privacy Breach, resulting from the conduct of the Insured Activities, provided that:

(a) the Insured first discovers the Privacy Breach during the Period of Insurance and notifies Us during the Period of Insurance; and

(b) the Insured provides written notice to Us during the Period of Insurance of their intention to take such action prior to incurring any costs; and

(c) the Insured obtains from Us written consent prior to incurring such costs, such consent not to be unreasonably withheld.

The maximum aggregate amount payable under this Additional Cover is \$50,000.

The cover provided by this Additional Cover is not subject to the Insuring Clauses.



## Optional Additional Covers

We will provide the following additional cover to Insuring Clause 1.1, provided always that:

- a) each Optional Additional Cover will only apply where it is specifically noted in the Schedule as included; and
- b) the cover provided by each Optional Additional Cover is subject to the Schedule, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- c) the inclusion of any Optional Additional Cover will not increase the Limit of Liability. Where a sub-limit is stated in respect of any Optional Additional Cover, such sub-limit shall form part of and not be in addition to the Limit of Liability.

### 3.1 Fidelity

We will cover the Named Insured for loss of negotiable instruments, bearer bonds or coupons, stamps, money including bank or currency notes belonging to the Named Insured or for which the Named Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured person, provided always that:

3.1.1 such loss is first discovered by the Named Insured during the Period of Insurance and is notified in writing to Us within twenty-eight (28) days of the date of such discovery (but never beyond the expiry date of the Period of Insurance);

3.1.2 We will not cover the Named Insured for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;

3.1.3 We will not cover any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

3.1.4 the Named Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

3.1.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Named Insured to the person committing such act, or any monies held by the Named Insured and belonging to such person, will be deducted from any amount payable under this insurance;

3.1.6 We will only cover the Named Insured for the balance of loss sustained in excess of the amounts recoverable from the person committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;

3.1.7 one cost inclusive Excess shall apply to each and every individual loss incurred by the Named Insured;

3.1.8 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;

3.1.9 We will not cover the Insured where all principals, partners or directors of the Named Insured are persons committing or condoning such dishonest or fraudulent act or omission; and

3.1.9 the maximum aggregate amount payable under this Additional Cover is \$100,000.

The cover provided by this Additional Cover is not subject to the Insuring Clauses or Exclusion 6.15.



### **3.2 Extended Continuous Cover**

Where:

3.2.1 a Named Insured held a professional indemnity insurance policy for a period of twelve (12) months immediately preceding this Period of Insurance (the Preceding Policy); and

3.2.2 the Preceding Policy was issued by an insurance company which was fully authorised under the Insurance Act 1973;

3.2.3 the Named Insured became aware of the fact, matter or circumstance within the Preceding Policy period;

3.2.4 the fact, matter or circumstance did not first become a Claim within the same period of insurance that the Insured became aware of it being a fact, matter or circumstance then, for the purposes of Additional Cover 2.9 Continuous Coverage, We will treat the Preceding Policy as if it were a policy issued by Us.

### **3.3 Multi Year Run-Off**

In the event that, during the Period of Insurance, a Named Insured entity merges with or is taken over by another entity, intends to stop (or does stop) trading or is sold or wound up, then We will make available to such Named Insured entity (and any person who is or was a principal, partner, director or employee of such Named Insured prior to the effective date of such merger, takeover, sale, or ceasing to trade or winding up) an extension to the Period of Insurance for Insuring Clause 1.1 for a period of up to an additional six (6) years, provided always that:

3.3.1 such Named Insured shall give Us written notice of such merger, takeover, sale, ceasing to trade or winding up as soon as reasonably practicable and during the Period of Insurance;

3.3.2 Our offer to extend cover may be subject to such additional terms, conditions and premium as We may reasonably impose;

3.3.3 such extension of the Period of Insurance will not take effect until Our offer is accepted by such Named Insured; and

3.3.4 such extension will only apply to Claims arising out of a breach of professional duty in the exercise and conduct of the Insured Activities which occurred prior to the effective date of such merger, takeover, sale, ceasing to trade or winding up.

### **3.4 Difference in Conditions and Limits**

If We are not liable for payment or such payment is sublimited pursuant to Insuring Clause 1.1 and the Additional Covers associated with that Insuring Clause due to a condition or sublimit (or non existence of a sub limit) but more cover for the Claim would have been available to the Named Insured based on the professional indemnity section of the Previous Policy then this policy shall provide cover in accordance with the professional indemnity section of the Previous Policy. Previous Policy means the policy identified in the Schedule as Previous Policy. This will not apply to any Cyber Cover provided by the Previous Policy. Cyber Cover means any cover for cyber-attacks (such as computer hacking, ransomware or data theft) or data breaches.

Where a sublimit applies to coverage of a Claim in the professional indemnity section of the Previous Policy and the Claim is covered under this policy because of this Optional Extension, then the greater of the sublimit applicable in the Previous Policy or this policy shall apply to the Claim covered by this policy. Any applicable sublimit shall be in the aggregate for the policy period and be part of and not in addition to the Limit of Liability.



This Optional Extension shall not apply to the Limit of Liability, Defence Costs, the excess or any cover connected with Insuring Clauses 1.2 and 1.3. No cover shall be provided under this policy where the Previous Policy refers to another policy for coverage including any difference in conditions type extension contained in the Previous Policy. The operation of Exclusion 6.20 Previously Known Claim or Circumstance, is not affected by this Optional Extension. In addition, if We have applied an endorsement then the endorsement overrides and takes precedence over any cover provided by this Optional Extension.

# Claim Conditions

The following conditions apply to this insurance:

## 4.1 Discovery and Notice of a Claim

If during the Period of Insurance the Insured becomes aware of any Claim, Fine or Penalty, Privacy Breach, or Occurrence that may be covered under this policy or seeks to make any type of claim under this policy, the Insured will give notice to Us as soon as practicable and before the expiry or termination of the policy.

Notice of any Claim will be provided in writing to:

The Claims Manager  
claims@FTAinsurance.com.au  
FTA insurance  
PO Box H344  
Australia Square NSW 1215

## 4.2 Admission, Co-operation, Disclosure of Insurance and Mitigation

An Insured:

4.2.1 will not admit liability and no admission, offer, settlement, promise or payment without Our prior written consent

4.2.2 will co-operate and give Us and Our representatives all information and assistance that is reasonably required to enable Us to investigate and defend any Claim and to enable Us to determine Our liability under this policy;

4.2.3 will not disclose to anyone the existence of this policy without Our written consent unless as a consequence of the requirements of law;

4.2.4 must at their own cost use all due diligence and do all things reasonably practicable to avoid or diminish any liability or Defence Costs, in respect of which We are liable to indemnify or pay on behalf of the Insured under this policy.

## 4.3 Conduct of Claims

We shall be entitled at any time to take over conduct, in the name of the Insured the defence or settlement of any Claim or to prosecute in the name of the Insured for their or Our benefit any claim for payment, indemnity or damages or otherwise against any third party.

We also have the right to appoint legal representation for the Insured in respect of any Inquiry if We elect to do so.

## 4.4 Claim Settlements

We may at any time pay (or agree to pay) to the Insured in connection with any Claim or Claims the Limit of Liability (less the Excess, any sums already paid and unpaid Defence Costs incurred with Our prior written consent) and upon such payment (or agreement to pay) We will not be under any further liability in respect of such Claim or Defence Costs except for Defence Costs incurred prior to such payment (or agreement to pay) with Our prior written consent.

In the event that:

4.4.1 We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy, the Insured will refund to Us that proportion of the payment which exceeds the amount which We would otherwise have been liable for in accordance with the policy; or

4.4.2 We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy, Our liability in respect of such agreement

will be limited to the amount which We would otherwise have been liable for in accordance with the policy.

#### **4.5 Our and the Insured's Right to Defend**

The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued) advises that the defence of such proceedings has reasonable prospects of being successful.

If the Insured wishes to continue to contest any Claim which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim will thereafter be limited to the amount for which the Claim could have been settled plus Defence Costs incurred (with Our prior written consent) up to the date upon which the Claim would have settled, less any unpaid Excess or if less the final amount of the Claim including Defence Costs.

#### **4.6 Excess**

In respect of each Claim or loss covered by this policy the Insured is liable for any Excess stated in the Schedule and We will have no liability for the Excess.

#### **4.7 Allocation**

Where the Insured is entitled to reimbursement pursuant to Insuring Clause 1.4 Defence Costs in circumstances where a Claim is made and part of that Claim for compensation arises out of, is in connection with or is related to facts or matters that are not covered by this policy then, Our liability under this policy is limited to that proportion of the Defence Costs which represents a fair and equitable allocation between the Insured and Us, taking into account the relative legal and financial exposures attributable to covered allegations and allegations that are not covered under this policy.

In circumstances where the Insured and Us cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

#### **4.8 Several Liability of Underwriters**

The obligations of Our subscribing Underwriters, where there is more than one Underwriter referred to in the Schedule subscribing to the policy, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

#### **4.9 Our Limit of Liability**

Our liability under Insuring Clause 1.2 in respect of any one Occurrence or series of Occurrences arising out of or attributable to any one cause or event shall not exceed the Limit of Liability.

Our total liability under Insuring Clause 1.1 and 1.3 for all claims shall not exceed in the aggregate the Limit of Liability.

#### **4.10 USA and Canada jurisdiction**

Our liability pursuant to Insuring Clauses 1.2 and 1.3 is limited to USD1,000,000 for any action brought in any court of the United States of America, Canada or their dominions or protectorates or any judgement registered or lodged in any jurisdiction in connection with such an action and is subject to the exclusions and conditions of this policy.

# General Conditions

The following conditions apply to this insurance (for the purposes of these conditions any reference to Claim also includes reference to legal costs and expenses and a Fine or Penalty):

## 5.1 Terms of Payment

All premiums due to Us under this policy will be paid within thirty (30) days from the policy's inception.

## 5.2 Cancellation

5.2.1. The Insured is entitled to cancel this policy by notifying Us in writing, by email or by telephone within fourteen (14) days of either:

- a) the date the Insured receives this policy; or
- b) the start of the Period of Insurance;

whichever is the later.

A full refund of any premium paid will be made unless the Insured has made a claim in which case the full annual premium is due.

5.2.2. The Insured is entitled to cancel this policy after the cooling-off period by notifying Us in writing, by email or by telephone. Any return of premium due to the Insured will be calculated at a proportional daily rate depending on how long the policy has been in force unless the Insured has made a claim in which case the full annual premium is due.

5.2.3. The circumstances and manner in which We may cancel this insurance is governed by the Insurance Contracts Act 1984 (Cth). Any return of premium due to the Insured will be calculated at a proportional daily rate depending on how long the policy has been in force unless the Insured has made a claim in which case the full annual premium is due.

## 5.3 Subrogation

If any payment is made by Us, the Insured grants to Us all rights of recovery against any parties from whom a recovery may be made and the Insured will take all reasonable steps to preserve such rights.

## 5.4 Claims Aggregation

Where two or more Claims are in connection with the same original cause or series of related or interrelated events or causes or breaches of duty, then all such Claims will constitute one Claim under this policy and only one Excess will be payable by the Insured. In addition, the maximum amount payable by Us in respect such Claims will not exceed the Limit of Liability (except in respect of Defence Costs if they are stated to be "in addition" to the Limit of Liability).

## 5.6 Alteration to Risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Period of Insurance including but not limited to:

5.6.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and

5.6.2 any material change in the nature of the advice or professional services offered by an Insured.

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

### **5.7 GST**

Where We are required to cover or pay on behalf of the Insured and the Insured is entitled to claim an input tax credit in relation to GST the amount of such input tax credit will be deducted from any amount payable by Us. Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured's entitlement to the Input tax credit.

### **5.8 Complaints Procedures**

Any inquiry or complaint relating to this Insurance should be referred to us in the first instance. If we are unable to resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Australia Limited

Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000 Australia

Telephone: (02) 8298 0700

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

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

### **5.9 Service of Legal Notices**

We agree that any Summons, Writ or other like legal Notice or Process, which is to be served upon Us may be served upon Lloyd's General Representative at Lloyd's Australia:

Lloyd's Underwriters' General Representative in Australia

Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000 Australia

Telephone Number: (02) 8298 0700

who has authority to accept service and to enter an appearance on Our behalf, and who is directed at the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that he will enter an appearance on Our behalf.

If a suit is instituted against any one of Us all Lloyd's syndicates hereon will abide by the final decision of such Court or any competent Appellate Court.

### **5.10 General Insurance Code of Practice**

This policy is compliant with the Insurance Council of Australia's General Insurance Code of Practice.

Underwriters at Lloyd's and FTA Insurance proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the General Insurance Code of Practice is available by contacting FTA Insurance or is available for download from: [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

# Exclusions

The following exclusions apply to all Insuring Clauses and Included Covers and Additional Covers.

We shall not be liable to cover, or pay on behalf of, the Insured, or any other beneficiary, in respect of any liability, loss, costs, expenses, Claim, Defence Costs, Fine or Penalty, Privacy Breach or other claim in connection with this policy directly or indirectly arising out of, related to, or in connection with (whether actual or alleged):

## **6.1 Fines, Penalties, Punitive, Multiple or Exemplary Damages**

any fine or penalty or any multiple, exemplary, punitive or aggravated damages but not to the extent covered by Included Additional Cover 2.12 Compensatory Fines & Penalties.

## **6.2 Trading Losses and Insolvency**

6.2.1 any trading losses or trading liabilities or debts incurred by any Insured Activities managed or carried on by the Insured; or

6.2.2 the insolvency of the Insured.

## **6.3 Radioactivity or electromagnetic**

6.3.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

6.3.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

6.3.3 exposure to magnetic, electric or electromagnetic fields or radiation.

## **6.4 Midwifery and maternity/obstetrics**

midwifery, maternity or obstetrics.

## **6.5 War and Terrorism**

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

6.5.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;

6.5.2 riots, strikes or civil commotion;

6.5.3 any Act of Terrorism; or

6.5.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 6.5.1 to 6.5.3 above.

The burden of proving that a Claim does not fall within this exclusion will be upon the Insured.

## **6.6 Associated Companies**

a claim made against the Insured by any firm, company, partnership or other entity in which the Insured or any director, partner or principal of the Insured has a financial or executive interest or which has a financial or executive interest in the Insured unless solely emanating from an independent and unrelated third party.

## **6.7 Liability arising out of Employment**

6.7.1 bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, libel, slander, defamation, humiliation, discrimination, disease or death of any employee of the Insured or damage to or destruction



of any property of any employee, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment; or

6.7.2 workers' compensation law or accident compensation or industrial award, agreement or determination in connection with an employee of the Insured.

### **Exclusions only applicable to Insuring Clauses 1.1:**

The following exclusions apply to Insuring Clause 1.1 and any Additional Covers in connection with Insuring Clause 1.1.

We shall not be liable to cover, or pay on behalf of, the Insured, or any other beneficiary, in respect of any liability, loss, costs, expenses, Claim, Defence Costs, Fine or Penalty, Privacy Breach or other claim in connection with this policy directly or indirectly arising out of, related to, or in connection with (whether actual or alleged):

### **6.8 USA/Canada**

6.8.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates or any judgement registered or lodged in any jurisdiction in connection with such an action; or

6.8.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

### **6.9 Loss of Documents**

the physical loss of or damage to Documents which are stored on magnetic or electrical media unless such Documents have been, on a daily basis, duplicated on magnetic or electrical media so that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.

### **6.10 Liability Involving Transport or Property Owned by the Insured**

the ownership, possession or use by or on behalf of the Insured of any:

6.10.1 aircraft, watercraft, hovercraft, motor vehicle or trailer; or

6.10.2 buildings (including their contents and keys), structures, premises or land or that part of any building leased, occupied or rented by the Insured (including their contents and keys) or any property of the Insured.

### **6.11 Contractual Liability**

any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limiting the foregoing, any contractual term or agreement:

6.11.1 to pay liquidated damages or any penalty; or

6.11.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

### **6.12 Supply of Goods**

the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the Insured.

### **6.13 Directors' and Officers' Liability**

any conduct or alleged conduct of the Insured in the capacity of a director, secretary or officer of a body corporate or any breach or alleged breach by the Insured of a duty owed in that capacity.

### **6.14 Trustee Liability**

any services provided by the Insured in the capacity of a trustee provided always that this exclusion will not apply where the Insured acts as a stakeholder, custodian or trustee where

such activities are undertaken incidentally to the provision of other professional services in the conduct of the Insured Activities.

**6.15 Fraud, Dishonest, Criminal or Intentional Loss Damage or Injury**

any act, error or omission of any person which is dishonest, fraudulent, criminal or malicious or which is intended by that person to be defamatory, cause loss, damage or injury or to deprive a third party of a right to which they would otherwise be entitled (or which is done or omitted to be done with reckless disregard for the consequences) or is a wilful or reckless breach of statute, contract or duty but not to the extent covered by Included Cover 2.2 Dishonesty of an Insured or 2.1 Defamation, Libel and Slander.

**6.16 Certain Legislation**

the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth) or any State or Territory Fair Trading Act but not to the extent covered by Included Cover 2.4 Competition and Consumer Act and other Legislation (inc implied warranties).

**6.17 Infringement of Intellectual Property Rights**

any intellectual property rights including and without limiting the foregoing copyright or patents but not to the extent covered by Included Cover 2.5 Infringement of Intellectual Property Rights.

**6.18 Fees, Charges or other remuneration**

any fees, charges, disbursements, expenses, costs, taxes, commissions or other payments or benefits or remuneration of whatsoever kind received or retained by, or paid or payable to, the Insured.

**6.19 Retroactive Date**

the conduct of the Insured Activities prior to the retroactive date (if any) specified in the Schedule.

**6.20 Previously Known Claim or Circumstance**

any:

6.20.1 Claim made upon the Insured prior to the inception of this policy;

6.20.2 fact, matter or circumstance known to the Insured, at any time prior to the inception of this policy, and which the Insured knew or a reasonable person in the Insured's profession could, in the circumstances, be expected to know or have known might give rise to a Claim against the Insured; or

6.20.3 fact, matter or circumstances which were disclosed by the Insured to Us prior to the inception of this policy, whether in the proposal or otherwise; or

6.20.4 Claim, fact, matter or circumstance which was notified by the Insured to any prior insurer.

**6.21 Pollution**

asbestos, toxic mould, seepage, Pollution or contamination of any other kind.

**6.22 Cyber and Social Engineering Fraud**

any failure or the circumvention of the security of the Insured's Computer System, which results in any unauthorised access, unauthorised use (including and without limiting the foregoing an unauthorised use of an email address), hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage, deletion or disclosure of Data (including data of a third party) stored on any Computer System or of the Computer System itself.

“Insured’s Computer System” means any electronic hardware, software or any components thereof whether owned, operated, arranged, controlled or leased by the Insured or a third party via the Insured.

“Computer System” means any electronic hardware, software or any components thereof.

“Data” means any electronically stored digital or digitised information or media stored on a Computer System.

In addition, We will not cover You for any loss, Claim or Defence Costs, including and without limiting the foregoing the costs and expenses incurred in the defence, settlement or investigation of a loss or Claim arising from loss sustained from Social Engineering Fraud.

Social Engineering Fraud means a misrepresentation or an intentional, malicious, wilful or fraudulent act, undertaken by someone else (whether that party can be identified or not) that misleads or results in the Insured’s, or someone else’s, money or securities or any other assets or property being transferred, disbursed, paid, delivered, altered, corrupted, stolen or lost.

### **6.23 Other Insuring Clause of this policy**

6.23 reimbursement under Insuring Clause 1.2 or 1.3 of this policy.

### **Exclusions only applicable to Insuring Clauses 1.2 and 1.3:**

The following exclusions apply to Insuring Clauses 1.2 and 1.3 and any Additional Covers in connection with Insuring Clause 1.2 and 1.3.

We shall not be liable to cover, or pay on behalf of, the Insured, or any other beneficiary, in respect of any liability, loss, costs, expenses, Claim, Defence Costs, Fine or Penalty, Privacy Breach or other claim in connection with this policy directly or indirectly arising out of, related to, or in connection with (whether actual or alleged):

### **6.24 Professional Liability**

rendering of or failure to render professional advice, design, specification or service for a fee. Without limiting the foregoing this includes when the fee is part of the cost and is not charged separately.

### **6.25 Cyber Liability (only applicable to Insuring Clauses 1.2 and 1.3)**

from a Cyber-attack, including:

6.25.1 functioning, non-functioning, improperly functioning, availability or unavailability of:

- a) the internet or similar facility; or
- b) any intranet or private network or similar facility; or
- c) any website, bulletin board, chat room, search engine, portal or similar third party application service.

6.25.2 alteration, corruption, destruction, distortion, erasure, theft or other loss of or loss of use or damage to Data, software, information repository, microchip, integrated system or similar device in any computer equipment or non-computer equipment or any kind of programming or instruction set; or

6.25.3 loss of use or functionality, whether partial or entire, cost, expense of data, coding, program, software, any computer or computer system or other device dependent upon any microchip or embedded logic and any ensuing inability or failure of any insured to conduct business.

6.25.1 to 6.25.3 apply regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purposes of this clause:

Data means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

Cyber-attack means:

- a) the spread of computer viruses, worm, logic bomb or trojan horse,
- b) any malicious, non-malicious and/or inappropriate e-mail,
- c) any unauthorised collection or misuse of any data
- d) any breach of confidentiality or infringement of any privacy law or right to privacy.

#### **6.26 Loss of Use**

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

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

6.26.2 the failure of the Insured's Products to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This Exclusion shall not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of Products or work performed by or on behalf of the Insured after such Products or work have been put to their intended use by any entity other than the Insured.

#### **6.27 Rectification of faulty work**

the rectification, completion, improving or correcting of work performed by or on behalf of the Insured.

#### **6.28 Libel, slander or defamatory material**

the publication or utterance of libel or slander or other defamatory material.

#### **6.29 Contractual Liability**

liability assumed under an agreement unless such liability:

6.29.1 would have attached in the absence of such agreement;

6.29.2 arises out of a condition or warranty of goods implied or imposed by statute;

6.29.3 has been agreed by Us and specifically designated in the Schedule or in any written endorsement.

#### **6.30 Pollution, Contamination or Asbestos**

6.30.1 Pollution or contamination unless caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance; or

6.30.2 the cost of removing nullifying or cleaning up seeping polluting or contaminating substances unless the Pollution or Contamination is caused by a sudden identifiable unintended and unexpected incident which takes place within the Territorial Limits in its entirety at a specific time and place during the Period of Insurance; or

6.30.3 asbestos or toxic mould.

In any event any action brought in connection with Pollution or contamination in any court of the United States of America, Canada or their dominions or protectorates or any judgement registered or lodged in any jurisdiction in connection with such an action shall be excluded and no cover shall be provided.

### **6.31 Communicable Disease**

6.31.1 a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto; or

6.31.2 any action taken to control, prevent, isolate, quarantine, suppress, mitigate or in any way relating to any actual or suspected outbreak of any Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease;

6.31.3 instructions, orders, requests, restrictions or limitations given by any national or local government, regulatory or statutory body, health authority or organisation relating to any *Communicable Disease*.

If We allege that by reason of this exclusion a Claim, loss or Defence Cost is not covered by this policy, the burden of proving the contrary shall rest with the Insured.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance, medium or agent from any organism to another organism where:

- i. the substance, medium or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- ii. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- iii. the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.

### **Exclusions only applicable to Insuring Clause 1.2:**

The following exclusions apply to Insuring Clause 1.2 and any Additional Covers in connection with Insuring Clause 1.2.

We shall not be liable to cover, or pay on behalf of, the Insured, or any other beneficiary, in respect of any liability, loss, costs, expenses, Claim, Defence Costs, Fine or Penalty, Privacy Breach or other claim in connection with this policy directly or indirectly arising out of, related to, or in connection with (whether actual or alleged):

### **6.32 Aircraft and Watercraft**

ownership possession maintenance operation or use by or on behalf of the Insured of any:

- a) airlines, Aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other outer space connected risks; or
- b) hovercraft or Watercraft other than hand propelled Watercraft or other Watercraft, not exceeding 8 metres in length.

Provided that (b) above shall not apply with regard to Claims arising out of:

- i. Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
- ii. hovercraft owned and operated by others and used by the Insured for Insured Activities entertainment.
- iii. Watercraft owned by others and used by the Insured for Insured Activities entertainment.
- iv. hand propelled or sailing craft exceeding eight (8) metres in length, whilst such craft is in territorial waters.

### **6.33 Mechanically Propelled Vehicle**

ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:

- a) for which compulsory insurance or security is required under any legislation governing the use of the vehicle;
- b) where reimbursement is provided by any other insurance effected by or on behalf of an Insured.

Provided that this Exclusion shall not apply to liability caused by or arising from:

- i. the use of vehicles whilst being operated as a Tool of Trade at the Named Insured's premises or on any site at which an Insured is working;
- ii. the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle;
- iii. Damage to any building, bridge, weighbridge, road or to anything beneath caused by vibration or by the weight of any vehicle or of its load.

### **6.34 Product Supplied**

any Product supplied after it has ceased to be in the custody or under the control of the Insured or any employee other than food or drink for consumption on the Insured's premises.

### **6.35 Property Damage to property:**

any Property Damage to property:

- a) belonging to the Insured;
- b) in the physical or legal care, custody or control of the Insured or any employee of the Insured, other than:
  - i. personal effects of any visitor, director, partner, employee of the Insured; or
  - ii. premises (including their fixtures and fittings) leased or rented to the Insured; or
  - iii. premises and their contents (but not their keys) not belonging to, leased or rented to the Insured, at which the Insured is conducting work as part of their usual Insured Activities; or
  - iv. buildings (including contents therein but not their keys) which are not owned, leased or rented by the Insured but are temporarily occupied by the Insured for the purpose of maintenance alteration extension installation or repair; or
  - v. vehicles and their contents (not owned by the Insured) in any car park owned by the Insured but not operated for reward.

The maximum amount payable in respect of all property under clause 6.35 b) is \$250,000 in the aggregate in any one Period of Insurance and is part of and not in addition to the Limit of Liability.

### **6.36 Advertising Injury**

Advertising Injury:

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



### **6.37 Other Insuring Clauses**

reimbursement under Insuring Clauses 1.1 or 1.3 of this policy.

### **Exclusions applicable to Insuring Clause 1.3 only:**

The following exclusions apply to Insuring Clause 1.3 and any Additional Covers in connection with Insuring Clause 1.3.

We shall not be liable to cover, or pay on behalf of, the Insured, or any other beneficiary, in respect of any liability, loss, costs, expenses, Claim, Defence Costs, Fine or Penalty, Privacy Breach or other claim in connection with this policy directly or indirectly arising out of, related to, or in connection with (whether actual or alleged):

### **6.38 Product Recall**

- a) withdrawal, recall, inspection, repair, replacement, alteration, removal, rectification, reinstatement, or reinstallation of any of the Insured's Products or any refund made in respect of any of the Insured's Products; and
- b) damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

### **6.39 Product in Aircraft**

Product which to the knowledge of the Insured is intended for:

- a) use in or on any aircraft or aero spatial device; or
- b) aviation or aero spatial purposes.

### **6.40 Product for the United States or Canada**

Product supplied which to the knowledge of the Insured is for use in or supply to the United States of America or Canada and their respective protectorates and territories unless otherwise agreed in writing by Us.

### **6.41 Product Fault due to defect**

property damage due to the Insured's products if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability.

### **6.42 Product warranty**

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

### **6.43 Other Insuring Clauses**

reimbursement under Insuring Clauses 1.1 or 1.2 of this policy.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions will remain in full force and effect.



## Definitions and Interpretations

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear in capital letters and whether they are used in the plural or singular form, they are deemed to have the meaning set out below:

### 7.1 Act of Terrorism

Means activity that:

7.1.1 involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and

7.1.2 appears to be intended to:

7.1.2.1 intimidate or coerce a civilian population;

7.1.2.2 disrupt any segment of the economy of a government de jure or de facto, state or country;

7.1.2.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or

7.1.2.4 affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

### 7.2 Advertising Injury

Means any unintentional:

7.2.1 libel, slander, defamation;

7.2.2 infringement of copyright or passing off or title or slogan;

7.2.3 piracy, unfair competition, idea misappropriation or invasion of rights of privacy;

7.2.4 breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast, telecast or via an internet website, and caused by or arising out of the Insured's advertising activities.

### 7.3 Aircraft

Means any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space.

### 7.4 Claim

Means:

7.4.1 any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the Insured claiming damages or other compensatory relief;

7.4.2 the positive assertion in writing or verbally of a legal entitlement to damages or other compensatory relief in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue such legal entitlement; or

7.4.3 for the purpose of Included Additional Covers 2.19, any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty.

### 7.5 Contractual Liability

Means liability which attaches because of a contract or agreement but only to the extent to which it would have attached in the absence of such contract or agreement.

## **7.6 Cooperate**

Means that the Insured:

7.6.1 assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available; and

7.6.2 will at its own cost give to Us or Our duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

## **7.7 Defence Costs**

Means all reasonable and necessary 3<sup>rd</sup> party costs and expenses incurred in the investigation, reporting on, defence or settlement of any Claim which is covered (and not excluded) under this policy.

## **7.8 Documents**

Means project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and will include electronic data (but not the computer software the data is stored via). This definition excludes bearer bonds, coupons, bank or currency notes (and coins) and other negotiable instruments.

## **7.9 Excess**

If the Schedule states that the Excess is Defence Costs “inclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured.

If the Schedule states that the Excess is Defence Costs “exclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured excluding Defence Costs. The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST.

## **7.10 Fine or Penalty**

Means

any compensatory civil penalty.

## **7.11 Inquiring Body**

Means any official body or institution empowered by law to investigate the professional conduct of the Insured including but not limited to a coroner’s court, Royal Commission, statutory regulatory body, tribunal or legally constituted industry or professional board but excluding any parliament or any committee of a parliament.

## **7.12 Insured**

Means:

7.12.1 the Named Insured;

7.12.2 any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured;

7.12.3 any person who is, during the Period of Insurance, an employee, trainee or volunteer of the Named Insured but only in respect of work performed while an employee, trainee or volunteer of the Named Insured and on behalf of the Named Insured;

7.12.4 any former principal, partner, director, trainee, volunteer or employee of the Named Insured but only in respect of work performed while a principal, partner, director, trainee, volunteer or employee of the Named Insured and on behalf of the Named Insured; and/or

7.14.5 for the purposes of on hired labour provision provided by the Insured, any on hired employees or independent contractors whose work at a host employer is or was arranged by the Named Insured.

7.14.6 if the Named Insured is a registered training organisation, then any trainees of the Named Insured whilst on work placement as part of the requirements of their training.

### **7.13 Insured Activities**

Means the Insured's activities as described in the Schedule and shall include recruitment and labour hire services including the following arising out of these activities:

- i. placement of candidates in permanent positions, in the Insured's capacity as an employment agent;
- ii. temporary placement of employees and independent contractors with third parties for the provision of on-hired services and the vicarious liability that flows from them;
- iii. the provision of the services for which on-hired employee or independent contractor has been placed with the host employer;
- iv. employment consulting services in the areas of occupational health and safety, human resources, human resources relations, human resources management, employment, outsourcing and psychological testing;
- v. training and induction in all areas including group training;
- vi. payroll management for employees and independent contractors; and

for the purposes of Insuring Clause 1.2 shall include:

7.13.1 the provision and management of catering, social, sports, educational, medical, dental and welfare organisations for the benefit of the Insured's employees and fire, security, first aid and ambulance services;

7.13.2 the ownership, repair, maintenance and decoration of the Insured's premises;

7.13.3 private work carried out by any employee of the Insured (with the consent of the Insured) for any director, partner or senior official of the Insured.

### **7.14 Limit of Liability**

Means the sum shown in the Schedule.

### **7.15 Mechanically Propelled Vehicle**

Means any type of machine on wheels, skis or on self-laid tracks made or intended to be propelled other than by manual or animal power.

### **7.16 Named Insured**

Means the person(s), partnership, company, corporation or other entity named as the Insured in the Schedule.

### **7.17 Occurrence**

Means:

7.17.1 an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury or Property Damage that is neither expected nor intended from the Insured's standpoint;

7.17.2 all events of a series consequent on or attributable to one source or original cause are deemed to be one Occurrence.

**7.18 Period of Insurance**

Means the period shown in the Schedule.

**7.19 Personal Injury**

Means:

- 7.19.1 bodily injury, death, illness, disease, or disability;
- 7.19.2 mental injury, mental anguish, or shock;
- 7.19.3 false arrest, false imprisonment, wrongful detention, malicious prosecution, or humiliation;
- 7.19.4 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;
- 7.19.5 racial, religious, sexual or age discrimination not committed by or at the direction of the Insured;
- 7.19.6 loss of consortium resulting from any of the circumstances described in clauses (7.19.1) to (7.19.4) above.

**7.20 Pollution**

Means any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which will mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, will include offence caused to any of their senses) into or onto any water, land or air.

**7.21 Preceding Policy**

Means a professional liability insurance policy for a period of twelve (12) months immediately preceding, without interruption, the Period of Insurance.

**7.22 Privacy Breach**

Means an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

- (a) personal information, as defined in the Privacy Act 1988 (Cth), or
- (b) third party corporate information that is identified as confidential.

**7.23 Product**

Means any product or item (after it has ceased to be in the possession of the Insured) sold supplied erected repaired altered treated installed processed manufactured tested serviced hired out stored transported or delivered by or through the Insured including containers packaging or labelling thereof in the course of the Insured Activities in or from the Territorial Limits and also includes:

- 7.24.1 any design, formula or specification of such Product created by the Insured;
- 7.24.2 anything in respect of which the Insured is deemed to be the manufacturer by operation of a law of Australia or its external territories.

**7.24 Property Damage**

Means:

- 7.24.1 physical injury to, destruction of or loss of tangible property including resulting loss of use of that property;
- 7.24.2 loss of use of tangible property that is not physically damaged, lost or destroyed provided that such loss of use is caused by physical damage to or destruction of other tangible property.

**7.25 Schedule**

Means the document entitled 'Schedule' that relates to this insurance.

**7.26 Sub-Consultant**

Means any sub contractor or sub consultant of the Named Insured who at the time of the act error or omission which caused the Claim:

7.18.1 had entered into a written contract with the Named Insured where they earned at least 90% of their income (for the 6 months prior to the act error or omission that led to the Claim) from the Insured; and

7.18.2 were under the direct control and direct supervision of the Insured;

7.18.3 conducted the Insured Activities on behalf of the Insured; and

7.18.3 the Insured declared the income to Us generated by the sub contractor or sub consultant in the proposal.

**7.27 Territorial Limits**

Means anywhere in the world except the United States of America, Canada and their respective protectorates and territories where this insurance will only apply in respect of the Insured's Product knowingly exported into such countries as agreed in writing by Us and/or executives normally resident in the Commonwealth of Australia travelling to such countries.

**7.28 Tool of Trade**

Means any Mechanically Propelled Vehicle which has mechanical digging, scraping, drilling equipment or any tool or plant attached but only when it is being used by the Insured on any worksite at which work is performed for or in connection with the Insured Activities.

**7.29 Watercraft**

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

**7.30 We, Us, Our**

Means Certain Underwriters at Lloyd's whose obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.