

Australian Bookkeepers Network

Combined Liability Insurance (Australia)
Policy Wording v.7



IMPORTANT NOTICES

For the purposes of the Important Notices section, all references to:
“you” or “your” has the same meaning as the “Insured” as defined in the Definitions Section of the policy wording;
“we”, “our”, “us” or “Insurer”, has the same meaning as “Underwriter” as defined in the Definitions Sections of the policy wording.

A Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984 (Cth) to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer’s decision whether to accept the risk of the insurance and, if so, on what terms.

You have this duty until the insurer agrees to insure you.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance. Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract, or both, in accordance with its rights at law, including under the Insurance Contracts Act 1984 (Cth).

If your non-disclosure is fraudulent, the insurer may refuse to pay a claim and treat the contract as if it never existed, in accordance with its rights at law, including under the Insurance Contracts Act 1984 (Cth).

B Claims Made Policy

Section 1 and Section 3 of this policy, the Professional Indemnity and Directors and Officers Indemnity sections, apply on a claims made and notified basis.

This means that Section 1 and Section 3 of the policy respond to:

- 1) any claim first made against you during the period of insurance and notified during the period of insurance, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against him/her; and
- 2) any claim made against you after the expiration of the policy provided such claims arise out of facts that you have notified in writing during the period of insurance pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth). The facts that you may decide to notify are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the time at which the policy expires. If you give written notification of facts during the period of insurance, 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 (Cth) is extracted below:

“Where the insured gave notice in writing to the insurer of facts that might give rise to a 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 insurance provided by the contract.”

C Retroactive date

Section 1 (Professional Indemnity) of the policy contains a retroactive date. This means that cover is excluded for any claim arising from any act occurring or committed prior to the retroactive date.

D Prior and pending litigation date

Section 3 (Director’s and Officer’s Indemnity) of the policy contains a ‘prior and pending litigation date’. This means that cover is excluded for any claim arising from any act relating to any prior and/or pending litigation committed prior to the prior and pending litigation date.

E Preservation of Insurer's Rights of Recovery/Subrogation

The policy contains provisions to the effect that the **insured** shall not surrender any right of recovery that it may have against another party without the **underwriter's** prior written consent. Failure to comply with this condition may permit the **underwriter** to reduce its liability in respect of a loss under the policy.

INSURING CLAUSE

This **policy** and the **schedule** have been prepared in accordance with the **insured's** instructions.

The **insured** is required to read it carefully to ensure that it meets with its requirements.

Alterations in the insurance required after the issue of the **policy** and the **schedule** will only be effective when a new **policy** or an **endorsement** has been issued which contains those alterations.

All material facts must be disclosed to the **underwriter**. Failure to do so may affect the rights of the **insured** under the **policy** as outlined in clause A. Your Duty of Disclosure on page 2 of this **policy**. A material fact is a fact likely to influence the **underwriter** in the acceptance or assessment of this insurance.

The **underwriter** and the **insured** agree that:

- 1) this **policy**, the **schedule** (including any **schedule** issued by the **underwriter** in substitution) and any **endorsements** shall be considered one document;
- 2) the **proposal** shall be incorporated in and form the basis of this **policy**;
- 3) the **underwriter** will provide the insurance described in this **policy** subject to its terms, conditions and exclusions for the **period of insurance** shown in the **schedule** and any subsequent period for which the **insured** shall pay and the **underwriter** shall agree to accept the premium.

POLICY CONTENTS

INSURING CLAUSE3

POLICY CONTENTS.....4

DEFINITIONS5

SECTION 1 – PROFESSIONAL INDEMNITY 11

SECTION 2 – PUBLIC & PRODUCTS LIABILITY 16

SECTION 3 - DIRECTORS & OFFICERS.....20

GENERAL POLICY EXCLUSIONS.....22

GENERAL POLICY CONDITIONS25

GENERAL CLAIMS CONDITIONS..... 27

DEFINITIONS

A defined word, term or phrase will be shown in bold each time it appears in the **policy** except where incorporated in headings and titles. Each time one of the following defined words, terms or phrases is used, it will have the same meaning wherever it appears in the **policy** whether expressed in the singular or the plural, male, female or neutral, unless an alternative definition is stated to apply.

1) **airside liability**

Liability in connection with any area of airport premises which has restricted rights of access, including manoeuvring areas, aprons, taxiways, runways and service roads, which are directly associated therewith.

2) **business**

- a) The professional advice and professional services provided by the **insured** as declared in the **proposal** and stated in the **schedule** as the Profession and Sub-Professions;
- b) In respect of Section 2 (Public and Products Liability) only, **business** shall also include:
 - i) engagement of subcontractors for performance of work on behalf of the **insured**;
 - ii) organisation of and participation in exhibitions, trade fairs and conferences;
 - iii) the **insured's** activities as property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
 - iv) provision and management for the benefit of any **employee** of canteen, social, sports, welfare, fire, first aid, rescue and ambulance services;
 - v) provision for the benefit of any **employee** of nursery, crèche or child or baby care facilities;
 - vi) private work undertaken by any **employee** for any director or partner or executive of the **insured**;
 - vii) the activities of security organisations for the benefit of the **insured**;
 - viii) the organisation or sponsorship of charitable events or similar fund raising activities;
 - ix) sponsorship of events, organisations, entities and individuals;
 - x) repair, maintenance and servicing of the **insured's** mechanically-propelled vehicles;
 - xi) sale or disposal of own property and goods including owned mechanically-propelled vehicles;
 - xii) provision of gifts and promotional material incidental to the **business**.

3) **claim**

- a) Any written or verbal notice of demand for compensation made by a third party against the **insured**;
- b) Any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **insured**;
- c) Any notice of intention, whether orally or in writing, to commence legal proceedings against the **insured**.

4) **computer System**

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

5) **computer virus**

Any malicious software code including but not limited to any logic bomb, Trojan horse or worm that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.

6) **continuity date**

The inception date of the first policy issued by the **underwriter** to the **insured** where the **insured** can demonstrate that it has been continually indemnified by the **underwriter** without interruption subsequent to such date.

7) **corporate information**

With respect to an organisation, any information held by the **insured**:

- a) that is subject to any form of confidentiality agreement or confidentiality provision in a contract or agreement between the organisation and the **insured**; or
- b) which the **insured** is legally required to maintain in confidence.

However, **corporate information** does not include **protected personal information** or any publicly available information that is lawfully in the public domain or information available to the general public from government records

8) **cyber act**

An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system**.

9) **cyber incident**

- a) Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **computer system**;
- b) Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**

10) **data**

Information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form used, accessed, processed, transmitted or stored by a **computer system**.

11) **data protection law**

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

12) **damage**

Physical loss or physical destruction or physical damage to material property.

13) **data breach incident**

The loss of **protected data** or unauthorised acquisition, access or disclosure of **protected data**.

All **data breach incidents** that involve the same or related subject, person, class of persons or have common facts or circumstances or involve common transactions, events or decisions, regardless of the number of repetitions, alterations, actions, or forms of communication will be treated as one data breach incident.

14) **deductible**

The first part of each and every **claim** borne by the **insured** as stated in the **schedule**.

15) **defence costs**

Reasonable legal costs and legal expenses incurred by or on behalf of the **insured** with the prior written and continuing consent (which shall not be unreasonably withheld) of the **underwriter** in relation to the investigation and defence of any **claim** covered under this **policy**, including any appeal issued in connection with a **claim**. **Defence costs** shall not include the **insured's** own costs and expenses, salaries, remuneration for **employees** or any other internal expenses, overheads, fees or benefit of the **insured**.

16) documents

All documents directly connected with the **business** whether kept in paper, magnetic or electronic form belonging to the **insured** or for which the **insured** is legally responsible whilst in the custody of the **insured**, in the ordinary course of the **business**. **Documents** shall not include **data**, stamps, currency, coins, bank notes and bullion, travellers' cheques, cheques, postal orders, money orders, securities and any other negotiable instrument.

17) employee

- a) Any person under a contract of service or apprenticeship with the **insured**;
- b) In respect of Section 2 (Public and Products Liability) only, **employee** shall also include:
 - i) any labour master or labour only sub-contractor or persons supplied by them whilst under the direct control and supervision of the **insured**;
 - ii) self-employed persons engaged by the **insured**;
 - iii) persons engaged by the **insured** under work experience, training, study or similar schemes;
 - iv) any person hired to, borrowed by or supplied to the **insured** from any other employer;
 - v) voluntary workers for the **insured**;
 - vi) outworkers and home workers for the **insured**;
 - vii) any prospective **employee** who is being assessed by the **insured** as to his or her suitability for employment;

whilst employed by or engaged by and under the control of the **insured** in connection with the **business**

18) employment practices dispute

Any **claim** brought by any past, present, or potential **employee** which alleges any breach of any employment contract; wrongful dismissal or termination of employment whether actual or constructive; unfair dismissal; unequal pay; unlawful deduction from wages; discrimination including on grounds of sex, sexual orientation, pregnancy, age, religion, race, disability; sexual or other harassment in the workplace; victimization in the workplace; employment related misrepresentations; wrongful deprivation of any career opportunity, employment or promotion and any wrongful discipline or evaluation or failure to adopt adequate employment or workplace policies or procedures.

19) endorsement

Any document which contains alterations or amendments to this **policy**.

or impair the functionality of any **computer system**, software and ancillary equipment.

20) injury

- a) Bodily injury, death, disease or illness which shall include psychiatric illness.
- b) In respect of Section 2 (Public and Products Liability) only, **injury** shall also include:
 - i) False arrest, false detention, false imprisonment, wrongful eviction
 - ii) Nuisance, trespass or interference with any easement, right of air, light, water or way.

21) inquiry

Any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the **business** of the **insured**.

22) insured

- a) The person, company, firm, partnership, organisation or other entity stated in the **schedule** as the Insured;
- b) Any person who is or who becomes during the **period of insurance** a partner, director, principal or member of the company, firm, partnership, organisation or other entity stated in the **schedule** as the Insured;
- c) Any former partners, directors, principals or members of the company, firm, partnership, organisation or other entity stated in the **schedule** as the Insured;
- d) Any **employee**;
- e) In the event of the death or bankruptcy of any person **insured** under this **policy**, such person's estate, heirs, legal representatives or assignees, for legal liabilities incurred due to any act, error or omission of such deceased or bankrupt person.

Provided always that such parties requiring indemnity shall observe, fulfil and be subject to the terms, conditions, exclusions, extensions and **endorsements** of this **policy**.

23) insured's computer system means all interconnected electronic computers and associated input and output devices owned or leased and operated by the **insured**.

24) insured person

Any natural person who is or was or may during the **period of insurance** become a director or officer of the **insured** and any natural person who is construed to be a director or officer within the meaning of any applicable law or regulation governing such matters.

25) intellectual property rights

Intellectual property rights including copyright, design right, registered design or trademark. **Intellectual property rights** shall not include any patent or trade secret.

26) limit of indemnity

The amount stated in the **schedule** for each Section of the **policy** being the amount payable by the **underwriter** under such Section.

27) loss

The legal liability of the **insured** to pay for:

- a) **defence costs**;
- b) awards of costs, including claimants legal costs and expenses;
- c) settlements entered into with the prior written consent of the **underwriter**.

28) network security incident

The failure of the **insured** to prevent a **cyber act** that results in:

- a) The inability of a third party to access the **insured's computer system**;
- b) The negligent transmission of a **computer virus** by the **insured**;
- c) The destruction, corruption, deletion or alteration of **data** used, accessed, processed, transmitted or stored on the **insured's computer system**.

29) occurrence

An accident or event, including continuous or repeated exposure to the same conditions which results in **injury** or **damage** neither

30) period of insurance

The period of insurance stated in the **schedule**.

31) policy

- a) All terms, conditions, exclusions, extensions and the **schedule** comprising this document;
- b) All other schedules, notices, appendices, subjectivity notices and other **documents** agreed by the **underwriter** and the **insured** attaching to this document from time to time;
- c) All **endorsements** for incorporation in this document,

all of which shall be read together and constitute the contract of insurance between the **insured** and the **underwriter**.

32) pollution

Discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

33) pollution incident

Sudden, unexpected and unintended **pollution** that takes place in its entirety at a specific time and place during the **period of insurance**.

34) prior and pending litigation date

The inception date of the first **policy** issued by the **underwriter** to the **insured** where the **insured** can demonstrate that it has been continually indemnified by the **underwriter** without interruption subsequent to such date.

35) products

Goods or products (after they have ceased to be in the possession or under the control of the **insured**) manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the **insured**, including any container and instructions for use and including any structure constructed, erected or installed or any contract works executed by or on behalf of the **insured**, in the course of the **business**.

36) proposal

Any information provided by the **insured** or the **insured's** broker or agent on behalf of the **insured** in connection with this insurance.

37) protected data

Protected personal information and corporate information

38) principal

Any party, other than a director, partner or **employee** of the **insured**, with whom the **insured** has entered into a contract in the course of the **business**, but only to the extent that the contract between the **principal** and the **insured** requires such additional party to be indemnified in a like manner to the **insured**

39) protected personal information

With respect to natural persons, any private, non-public information but only to the extent such information allows an individual to be uniquely identified, including but not limited to the following:

- a) Social security number;
- b) Medical service or healthcare data;
- c) Driver's license or national insurance number;
- d) Equivalents of any of the information listed in a) to c) above;
- e) Account, credit card or debit card number alone or in combination with any information that permits access to an individual's financial information including but not limited to security or access code or password; and
- f) Other non-public information to the extent protected under statute or regulation of any government entity.

40) retroactive date

The date specified as the Retroactive Date in the **schedule**.

41) schedule

The **schedule** attaching to and forming part of this **policy** together with any renewal **schedule**.

42) subsidiary

any entity in which the person, company, firm, partnership, organisation or other entity stated in the **schedule** as the Insured:

- a) holds 50% or more of the share capital;
- b) controls more than 50% of the voting power;
- c) controls the composition of the board of directors.

43) territorial limits

The **territorial limits** stated in the **schedule**.

44) underwriter

Isure Pty Limited on behalf of Certain Underwriters at Lloyd's

45) wrongful act

- a) any actual or alleged negligent act, negligent error or negligent omission;
- b) any actual or alleged breach of Australian Consumer Law or the Competition and Consumer Act 2010 (Cth) or any similar legislation enacted by states or territories in Australia or New Zealand;
- c) any actual or alleged defamation, libel, slander, product disparagement or other tort-related disparagement or harm to character or reputation;
- d) any actual or alleged breach of privacy, breach of confidentiality, invasion of privacy or misuse of information which is either confidential or subject to statutory restrictions on its use;
- e) any actual or alleged infringement of any **intellectual property rights**, including any act of passing off;
- f) any other civil liability not excluded elsewhere in this **police**

SECTION 1 – PROFESSIONAL INDEMNITY

Section 1 of this **policy** operates on a 'claims-made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

INSURING CLAUSE

The **underwriter** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of:

1) Wrongful Acts

damages and claimants' costs for which the **insured** shall become legally liable to pay in connection with any **claim** first made and notified to the **underwriter** during the **period of insurance** arising out of any actual or alleged **wrongful act**:

- a) committed after the **retroactive date** by the **insured**;
- b) committed after the **retroactive date** by any party acting on behalf of the **insured** for whom the **insured** are legally liable, in the conduct of the **insured's business**.

2) Defence Costs

all **defence costs** incurred in connection with a **claim** covered under Insuring Clause 1 (Wrongful Acts) of this Section.

AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 1

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, the **underwriter** shall provide indemnity in respect of the following extensions:

1) Attendance at Inquiries

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of all reasonable legal costs and expenses incurred with the prior written consent (which shall not be unreasonably withheld) of the **underwriter** for representation of the **insured** at any **inquiry**.

Provided always that:

- a) the **inquiry** is ordered or commissioned during the **period of insurance**; and
- b) notice of such **inquiry** is provided to the **underwriter** during the **period of insurance**; and
- c) the maximum amount payable by the **underwriter** under this Extension during the **period of insurance** for all **inquiries** shall not exceed AUD250,000 in the aggregate during the **period of insurance**.

2) Continuous Cover

The **underwriter** shall indemnify the **insured** in respect of any **claim** that would otherwise be excluded by Exclusion 5) (Known Claims and Circumstances) of this Section.

Provided always that:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation; and
- b) the **insured** first became aware of the facts or circumstances giving rise to the **claim** after the **continuity date**.

3) Loss of Documents

The **underwriter** shall indemnify the **insured** in respect of the reasonable and necessary costs of repair, replacement and/or reconstitution of any **document** which has been unintentionally destroyed, damaged beyond reasonable use, lost or mislaid during the **period of insurance** and which after diligent search cannot be found.

Provided always that:

- a) such loss or **damage** is suffered, first discovered and notified to the **underwriter** during the **period of insurance** and in any event within 30 days of discovery; and
- b) no indemnity shall be afforded in relation to any **document** kept in magnetic or electronic form unless such **document** is duplicated and the duplicate is stored at a separate address as a back-up; and
- c) the **insured** shall provide the **underwriter** with bills and accounts substantiating the expenses incurred by the **insured** in repairing, replacing and/or reconstituting such **documents**; and
- d) no expense shall be incurred without the prior written consent (which shall not be unreasonably withheld) of the **underwriter**; and
- e) the maximum amount payable by the **underwriter** under this Extension during the **period of insurance** shall not exceed AUD500,000 in the aggregate.

4) Dishonesty

The **underwriter** shall indemnify the **insured** in respect of any **claim** arising out of any dishonest or fraudulent act or omission committed by any **insured** in the conduct of the **business**.

Provided always that:

- a) the **insured** shall give all necessary information and assistance to enable the **underwriter** to endeavour to obtain reimbursement for such **claim**; and
- b) any monies which, but for the dishonest or fraudulent act or omission, would be due from the **insured** to the dishonest or fraudulent person shall be deducted from the indemnity afforded under this Extension; and
- c) no indemnity shall be afforded to any **insured** or any other person or party who commits, condones or ignores such dishonest or fraudulent act or omission; and
- d) nothing in this extension shall preclude the **underwriter** from exercising any right of subrogation against any person or party committing or condoning such dishonest or fraudulent act or omission; and
- e) the **insured** shall bear the burden of providing satisfactory proof to substantiate a loss under this extension (including any costs incurred in such process) and the **underwriter** shall be under no obligation to provide indemnity to the **insured** until such time as it is satisfied that such loss has in fact been sustained; and
- f) the **underwriter** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the **insured** concerned.

5) Fidelity

The **underwriter** shall indemnify the **insured** in respect of financial loss suffered by the **insured** and notified to the **underwriter** during the **period of insurance** resulting from the loss of any:

- a) money, currency, coins, bank notes, cheques, postal orders, money orders or bullion;
- b) negotiable or non-negotiable instruments, or contracts representing money or other property including shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security;

due to any dishonest or fraudulent act or omission of any **employee**;

Provided always that:

- i) no indemnity shall be afforded in respect of any loss directly or indirectly caused by or contributed to by, or arising from the access or dissemination of any confidential information including any trade secret, computer program, customer information, patent or copyright;
- ii) no indemnity shall be afforded in respect of any loss directly or indirectly caused by or contributed to by, or arising from any fraudulent or dishonest act or omission of any Partner, Principal or Director of the **insured**;
- iii) no indemnity shall be afforded to any **insured** or any other person or party who commits, condones or ignores such dishonest or fraudulent act or omission;

- iv) the **underwriter** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- v) the **insured** shall bear the burden of providing satisfactory proof to substantiate a loss under this extension (including any costs incurred in such process) and the **underwriter** shall be under no obligation to provide indemnity to the **insured** until such time as it is satisfied that such loss has in fact been sustained;
- vi) the maximum amount payable by the **underwriter** under this clause during the **period of insurance** shall be AUD250,000 in the aggregate.

6) Superannuation Guarantee Obligation

The **underwriter** shall indemnify the **insured** in respect of damages and claimant's costs for which the **insured** shall become legally liable to pay in connection with any **claim** first made against the **insured** and notified to the **underwriter** during the **period of insurance** arising out of the calculation of and related advice in relation to Superannuation Guarantee obligations incidental to payroll related bookkeeping services and the preparation of "Superannuation Guarantee Charge" documents to submit to the Australian Tax Office for lodgement.

7) Network Security and Privacy Breach Liability

Notwithstanding General Policy Exclusion 7)(Cyber and Data) the **underwriter** shall indemnify the **insured** solely in respect of damages and claimant's costs for which the **insured** shall become legally liable to pay in connection with any **claim** first made against the **insured** and notified to the **underwriter** during the **period of insurance** arising out of:

- a) a **network security incident**;
- b) a **data breach incident**

The maximum amount payable by the **underwriter** under this Extension during the **period of insurance** shall be AUD250,000 in the aggregate.

LIMIT OF LIABILITY UNDER SECTION 1

- 1) The total amount payable by the **underwriter** under this Section of the **policy** in respect of any one **claim** shall be the **limit of indemnity**.
- 2) The indemnity provided under Insuring Clause 2 (Defence Costs) of this **policy** shall be in addition to the **limit of indemnity**, provided always that if the amount paid or payable to dispose of any **claim** is greater than the **limit of indemnity**, then the total amount payable by the **underwriter** for **defence costs** shall be limited to the proportion of the **defence costs** as the **limit of indemnity** under this **policy** bears to the amount paid or payable in respect of such **claim**.
- 3) All **claims** arising out of or in connection with, consequent upon or attributable to one source or originating cause shall be deemed to be one **claim** and only one **limit of indemnity** shall apply.
- 4) Any applicable sub-limit of indemnity available under any Extension of Cover or any **endorsement** shall be deemed to be part of and not in addition to the **limit of indemnity**.

DEDUCTIBLE APPLICABLE UNDER SECTION 1

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** promptly upon request

EXCLUSIONS APPLICABLE TO SECTION 1

The indemnity provided by this Section of the **policy** shall not apply to:

1) Injury and Damage

any **claim** caused by or contributed to by, or arising from:

- a) **injury**;
- b) **damage** other than as provided for under Automatic Extension of Cover 3) (Loss of Documents);

unless arising directly from a negligent act, negligent error or negligent omission in the conduct of the **insured's business**

2) Investment and Financial

any **claim** caused by or contributed to by, or arising from:

- a) the sale of any financial product or investment;
- b) the provision of any financial planning or investment advice by, or on behalf of the **insured**, including but not limited to the provision of any advice or recommendation as to valuation or performance of any financial product or investment;
- c) any advice or other service provided by, or on behalf of the **insured**, in respect of which there is a requirement to hold an Australian Financial Services Licence or Australian Credit Licence in order to provide such advice or service;
- d) the arrangement of any finance or credit by the **insured**

3) Joint Ventures and Consortia

any joint venture or consortium of which the **insured** is a member.

4) Intellectual Property

any **claim** caused by or contributed to by, or arising from infringement of any patent or trade secret.

5) Known Claims or Circumstances

- a) any **claim** which has been or ought to have been notified under any other policy of insurance in force prior to the inception of this **policy**;
- b) any **claim** which is based upon, arising from or in consequence of:
 - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given under any other policy;
 - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which the **insured** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

6) Licensing Inquires

any prosecution, **inquiry** or other investigation in relation to the **insured** failing to be properly licenced, registered or accredited to provide services in the conduct of the **business** as required by law or other regulation

7) Retroactive Date

any actual or alleged act, error, omission or event committed or occurring wholly or in part prior to the **retroactive date**.

8) Trade Specific

any **claim** caused by or contributed to by, or arising from:

- a) any valuation of any residential or commercial property other than where such valuation is undertaken for establishing a price for the sole purpose of marketing a property for sale;
- b) the provision of any legal advice or legal services where such advice or services should only be provided by a fully qualified legal practitioner or barrister. However, this exclusion shall not apply to legal services provided by any paralegal or legal secretary where such work is undertaken under the direct supervision of a qualified legal practitioner;

- c)
 - i) the issuance of any audit opinion;
 - ii) any advice provided on, or the arrangement of, corporate finance;
 - iii) any bankruptcy, insolvency or any form of legal administration;
 - iv) any business valuation.

9) Trading Debts

any **claim** caused by or contributed to by, or arising from:

- a) any trading loss or trading liability incurred by the **insured** or any **business** managed or carried on by or on behalf of the **insured** (including the loss of any client account or business);
- b) the actual or alleged overcharging or improper receipt of fees by the **insured** or any **business** managed or carried on by the **insured**.

SECTION 2 – PUBLIC AND PRODUCTS LIABILITY

Section 2 of this **policy** operates on a 'losses occurring' basis. This means that indemnity shall only be provided for losses that first occur during the **period of insurance**.

INSURING CLAUSES

The **underwriter** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify the **insured** in respect of:

1) Injury and Damage

damages and claimants costs for which the **insured** shall become legally liable to pay in connection with any **claim** for or arising out of:

- a) **injury**; and/or
- b) **damage**;

happening during the **period of insurance** within the **territorial limits** from an **occurrence** in connection with the **insured's business or products**.

2) Defence Costs

defence costs incurred in connection with a **claim** covered under Insuring Clause 1)(Injury and Damage) of this Section.

3) Representation Costs

all reasonable legal costs and expenses incurred with the prior written consent (which shall not be unreasonably withheld) of the **underwriter** for representation of the **insured** at proceedings in any court of summary jurisdiction arising out of any alleged breach of statutory duty that resulted in **injury**.

AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 2

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, the **underwriter** shall provide indemnity in respect of the following extensions:

1) Contingent Motor Liability

Notwithstanding Exclusion 6) a) (Vehicles) of this Section, the **underwriter** shall indemnify the **insured** in respect of damages and claimants costs for which the **insured** shall become legally liable to pay in connection with any **claim** arising out of or consequent upon **injury** to any person and/or **damage** occurring in connection with the use, in the course of conduct of the **business**, of any mechanically propelled vehicle not the property of, nor provided by the **insured**.

Provided always that no indemnity shall be afforded in respect of any **claim** arising out of or consequent upon:

- a) **damage** to such vehicle or to property conveyed therein; or
- b) **injury** or **damage** arising while such vehicle is being driven by the **insured** or any person who, to the knowledge of the **insured** or his representative, does not hold a licence to drive such vehicle, unless such person has held and is not disqualified from holding or obtaining such a licence; or
- c) **injury** or **damage** in respect of which the **insured** is entitled to indemnity under any other insurance; or
- d) **injury** or **damage** for which the **insured** is obliged to affect insurance by virtue of compulsory insurance as is required by the Motor Vehicle (Third Party Insurance) Act 1942 (NSW) and any subsequent amending legislation or similar in other States or Territories in Australia.

2) Sudden and Accidental Pollution

Notwithstanding General Policy Exclusion 16) (Pollution), the **underwriter** shall indemnify the **insured** in respect of damages and claimants costs arising out of any **claim** in respect of **injury** or **damage** caused solely by a **pollution incident**.
Provided always that:

- a) all **pollution**, which arises out of any one **pollution incident**, shall be deemed to have occurred at the time such incident takes place; and
- b) the **underwriter** shall not indemnify the **insured** under this Extension in respect of any liability directly or indirectly caused by contributed by or arising from **pollution** happening anywhere in United States of America or Canada or any territory within their jurisdictions.
- c) no indemnity shall be afforded in respect of any **claim** directly or indirectly arising from **pollution** (including any costs and expenses incurred in the prevention thereof) emanating from **underground resources**.

The maximum amount payable by the **underwriter** under this Extension shall be the **limit of indemnity** and nothing in this clause shall increase the liability of the **underwriter** to pay any amount in excess of such **limit of indemnity**.

Any sum the **underwriter** pays under this Extension shall reduce the amount of the aggregate **limit of indemnity** available for any other payment under this Section in respect of **claims** arising out of the **insured's products**.

The remaining amount of such aggregate **limit of indemnity** is the most that will be available for any other payment.

3) Cross Liabilities

If the **insured** comprises more than one party, the **underwriter** shall provide indemnity to each such **insured**, in the same manner and to the same extent, as if a separate **policy** had been issued to each, provided always that the cumulative total amount payable hereunder to all such **insureds** shall not exceed the **limit of indemnity**.

4) Indemnity to Principals

Notwithstanding General Policy Exclusion 5) (Contractual Liability), to the extent that any contract or agreement entered into by the **insured** with any **principal** so requires, the **underwriter** shall, subject to the **limit of indemnity**:

- a) indemnify the **insured** against liability assumed by the **insured**; and
- b) indemnify the **principal** in like manner to the **insured** in respect of the liability of the **principal** arising out of the performance by the **insured** of such contract or agreement.

Provided always that:

- i) the conduct and control of **claims** is vested in the **underwriter**; and
- ii) the **principal** shall observe, fulfil and be subject to the terms, exclusions, conditions and **endorsements** of this **policy**; and
- iii) Indemnity to any **principal** shall only apply in respect of any **claim** for which indemnity would otherwise have been provided hereunder if the **claim** had been made directly against the **insured**.

LIMIT OF LIABILITY UNDER SECTION 2

- 1) In respect of Public Liability, the maximum amount payable by the **underwriter** shall not exceed the **limit of indemnity** any one **occurrence**.
- 2) In respect of Products Liability, the maximum amount payable by the **underwriter** shall not exceed the **limit of indemnity** any one **occurrence** or all **occurrences** during any one **period of insurance**.
- 3) Where the **underwriter** is required to indemnify more than one party, the total amount payable under the **policy** shall not exceed the **limit of indemnity**.
- 4) Any applicable sub-limit of indemnity available under any Extension of Cover specified in Section 2 (Public and Products Liability) of this **policy** shall be deemed to be part of and not in addition to the **limit of indemnity** which applies in respect of Products Liability.

DEDUCTIBLE APPLICABLE UNDER SECTION 2

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.

Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** promptly upon request.

EXCLUSIONS APPLICABLE TO SECTION 2

The indemnity provided by this Section of the **policy** shall not apply to:

1) Airside Liability

any **claim** arising from or in connection with **airside liability**.

2) Damage to Products

any **claim** caused by contributed by or arising from **damage** to any **products** caused by any defect therein or the unsuitability thereof for their intended purpose.

3) Product Repair, Replacement or Recall

any costs and/or expenses in relation to the repair of or recall of, or the provision of any refund in respect of **products**.

4) Property

- a) any **claim** caused by contributed by or arising from **damage** to any property which, at the time of the **occurrence** giving rise to such **claim**, is owned by or held in trust by or in the custody or control of the **insured** other than:
 - i) **employees'**, directors', partners', guests', customers', clients' or visitors' personal effects including vehicles and their contents;
 - ii) premises, including fixtures, fittings and contents not owned by or leased to or rented to the **insured**, where the **insured** is undertaking work in connection with the **business**;
 - iii) premises and their fixtures and fittings, hired, leased, rented or lent to the **insured** other than **damage** in circumstances where liability is assumed by the **insured** under a tenancy or other agreement and would not have attached in the absence of such agreement;
 - iv) any vehicle, craft, container or railway rolling stock, including contents and accessories, not owned by or leased to the **insured**, for the purpose of or whilst being loaded or unloaded by the **insured**;
 - v) food or beverages for consumption on the premises of the **insured** or at any other premises where the **insured** is carrying on the **business**.
- b) **damage** to that part of any property on which the **insured** or any servant or agent of the **insured** is or has been working.

5) US Product Sales

any **claim** caused by contributed by or arising from **products** or services which to the knowledge of the **insured** are sold, supplied, erected, repaired, altered, treated or installed by the **insured**, in or for delivery or use in the United States of America or Canada.

6) Vehicles

any **claim** caused by contributed by or arising from the ownership, possession or use by or on behalf of the **insured** of any:

- a) mechanically-propelled vehicle or mobile plant, other than any **claim** arising out of:
 - i) the use of plant as a tool of trade on site; or
 - ii) the use of plant at the premises of the **insured**; or
 - iii) the loading or unloading of any vehicle, trailer or container; or
 - iv) the unauthorised movement on the **insured's** premises or contract site.

Provided always that:

- (a) indemnity is not provided by any motor insurance contract; or
 - (b) compulsory motor insurance is not required by law; or
 - (c) there is not more specific insurance applying
- b) aircraft or aerospace device; or
 - c) hovercraft or hydrofoil; or
 - d) water-borne craft, other than:
 - i) hand propelled or sailing craft in inland territorial waters; or
 - ii) water-borne craft not owned by the **insured**, but used by the **insured** for business entertainment; or
 - iii) mechanically-propelled water-borne craft not exceeding 22 feet in length in inland or territorial waters.

7) Professional Advice and Service

any **claim** directly or indirectly arising from, or in connection with:

- a) advice;
- b) designs;
- c) formulae;
- d) specifications;
- e) professional services

provided solely for a fee.

SECTION 3 – DIRECTORS AND OFFICERS INDEMNITY

Section 3 of this **policy** operates on a 'claims made and notified' basis. This means that indemnity shall only be provided for **claims** made against the **insured** and notified to the **underwriter** during the **period of insurance**.

INSURING CLAUSE

Notwithstanding General Exclusion 9) (Director's and Officer's Liability) the **underwriter** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify:

- a) any **insured person** in respect of **loss** arising from any **claim** first made against them during the **period of insurance**;
- b) the **insured** in respect of **loss** arising from any **claim** first made against any **insured person** when and to the extent that the **insured** has indemnified that **insured person**;

where such **claim** arises from a **wrongful act** committed by an **insured person** in the course of the performance of the **insured person's** duties solely in their capacity as a director or officer of the **insured**.

LIMIT OF LIABILITY UNDER SECTION 3

The maximum amount payable by the **underwriter** under this Section during the **period of insurance** for all **claims** shall not exceed AUD250, 000 in the aggregate during the **period of insurance**.

DEDUCTIBLE APPLICABLE UNDER SECTION 3

- 1) The **underwriter** shall only be liable to indemnify the **insured** for that part of the **insured's** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where the **underwriter** has paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse the **underwriter** promptly upon request.

EXCLUSIONS APPLICABLE TO SECTION 3

The indemnity provided by this Section of the **policy** shall not apply to:

1) **Bodily Injury and Property Damage**

any **claim** for **injury** or **damage**.

2) **Employment Claims**

any **claim** arising out of any obligation owed by the **insured** as employer to any current or former or prospective **employee**, including any **claim** arising out of any **employment practice dispute**;

3) **Fraudulent, Dishonest and Wilful Conduct**

any **claim** caused by, contributed to by, or arising from:

- a) the gaining of any financial advantage to which the **insured** or any **insured person** was not entitled, including the repayment of any wrongfully received monies;
- b) any conduct which involves wilful breach of duty in relation to the **insured**, or any breach of Section 182 or Section 183 of the Corporations Act (Cth);
- c) any dishonest, fraudulent, criminal or malicious act.

4) Known Circumstances and Prior Litigation

- a) any **claim** based upon, attributable to or arising out of any prior or pending litigation or proceedings, commenced before the **prior and pending litigation date**, including allegations deriving from the same or essentially the same facts, involving an **insured person** or the **insured** which has been or should have been the subject of notice given under any prior insurance;
- b) any **claim** which has been or ought to have been notified under any other **policy** of insurance in force prior to the inception of this **policy**; or
- c) any **claim** which is based upon, arising from or in consequence of:
 - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given under any other policy; or
 - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which the **insured** or any **insured person** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

5) Pension Schemes

any **claim** caused by any **insured person** acting in the capacity of trustee or fiduciary or administrator of any employer-sponsored pension or superannuation scheme or superannuation programme.

6) Professional Services

any **claim** caused by, contributed to by, or arising from any breach of, or failure to provide professional services.

7) Shareholders

any **claim** brought by or on behalf of any company owning 15% or more of the **insured's** issued share capital.

8) Share Offerings

any **claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving a **wrongful act** committed by any **insured person** in relation to any actual public offering of the **insured's** share capita

GENERAL POLICY EXCLUSIONS

The following exclusions shall apply to all sections of this policy.

The indemnity provided by this **policy** shall not apply to:

1) Abuse

any **claim** arising from or in connection with:

- a) any act of hurting or injuring mentally or physically by maltreatment or ill use;
- b) repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- c) actual or attempted sexual relations, sexual conduct or sexual intimacy, sexual harassment or sexual exploitation, or any act for the purpose of obtaining sexual gratification.

2) Asbestos

any **claim** caused by or contributed to by, or arising from asbestos or any material containing asbestos in whatever form or quantity.

3) Associated Companies

any **claim** brought by or on behalf of:

- a) any **insured**;
- b) any parent or **subsidiary**;
- c) any person having a financial, executive or controlling interest in the **insured** (unless the financial interest is less than 5%); or
- d) any entity controlled or managed by any **insured**; or where the **insured** has greater than a 5% interest, or where the **insured** has accepted a financial interest, irrespective of the amount, in the entity in exchange for fees incurred,

unless such **claim** is brought against the **insured** by an independent third party.

4) Avionics and Marine Products

any **claim** caused by or contributed to by, or arising from **products** (including hardware, software, firmware and cabling) or electronic equipment used in connection with:

- a) the safety, communication, navigation, control of flight or maintenance of orbit of any aircraft, spacecraft or other aerial device; or
- b) the safety, communication, navigation or propulsion of any hovercraft or watercraft.

5) Contractual Liability

any liability or obligation assumed by the **insured** under the terms of a contract agreement or warranty unless the **insured** would have been liable to the same extent in the absence of such contract, agreement or warranty.

6) Communicable Disease Exclusion

injury or **damage** caused by, arising out of or in any way involving:

- a) Coronavirus disease (COVID-19);
- b) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c) any mutation or variation of SARS-CoV-2);
- d) any other communicable disease;
- e) any fear or threat of a), b), c), or d) above.

7) Cyber and Data

- a) Any actual or alleged loss, damage, liability, **claim**, fine, penalty, cost (including, but not limited to, **defence costs** and mitigation cost) or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with:
- i) a **cyber incident**, unless subject to the provisions of paragraph b);
 - ii) a **cyber act**;
 - iii) a breach of **Data Protection Law** by the **insured**, or parties acting for the **insured**, involving access to, processing of, use of or operation of any **computer system** or **data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.
- b) Subject to all the terms, conditions, limitations and exclusions of this **policy** or any **endorsement**, sub-paragraph 7) a) i) above shall not apply to any otherwise covered **claim** under Section 1 – Professional Indemnity arising out of any actual or alleged breach of professional duty by the **insured** involving access to, processing of, use of or operation of any **computer system** or **data** unless such actual or alleged breach of professional duty by the **insured** is caused by, contributed to by, resulting from, arising out of or in connection with a **cyber act**.
- c) Section 2 – Public and Products Liability only in respect of loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **data**, including any amount pertaining to the value of such **data**;

8) Deliberate Acts

any **claim** caused by or contributed to by, or arising from any intentional act or omission committed or condoned by the **insured** or any wilful breach of or in reckless disregard of any statute, regulation, contract or duty by the **insured**, provided always that this exclusion shall not apply in respect of the indemnity afforded under Automatic Extension of Cover 5 (Fidelity) under Section (1) Professional Indemnity.

9) Director's and Officer's Liability

any **claim** made against any of the **insured's** directors, trustees or officers arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of authority, or breach of duty committed or attempted by such director or officer where such **claim** is made solely by reason of his holding the position of director or officer and having acted in that capacity, including but not limited to any **claim** arising from any statement, representation or information regarding the **business** contained within any accounts, reports or financial statements. This exclusion shall not apply in respect of the indemnity afforded under Section 3 – Directors and Officers Indemnity.

10) Employment Liability

any **claim** caused by or contributed to by, or arising from:

- a) **injury** to any **employee**;
- b) any breach of any contract of service or of any obligation owed by or any liability of the **insured** as an employer or potential employer to any **employee** or prospective **employee** including any **employment practices dispute**;

11) Fines & Penalties

any fine or penalty or any liquidated, punitive, exemplary, non-compensatory, multiple, or aggravated damages or any **claim** deemed uninsurable by law

12) Insolvency and Insurance

any **claim** caused by or contributed to by, or arising from:

- a) the insolvency or bankruptcy of the **insured** or any supplier to or licensor to the **insured**;
- b) any failure to maintain or obtain adequate insurance or finance;
- c) any lost profit, any mark up or any tax.

13) Jurisdiction and Territorial limits

- a) legal proceedings brought in a Court of Law outside the Jurisdiction stated in the **schedule** or brought in a Court of Law within that Jurisdiction to enforce a judgment or order made in any Court of Law outside that Jurisdiction;
- b) any **claim** caused by or contributed to by, or arising from **business** undertaken outside the **territorial limits**.

14) Medical Malpractice

any **claim** caused by or contributed to by, or arising from the provision of medical services by any professional (including but not limited to surgical, medical and dental practitioners, nurses and midwives, ambulance personnel and paramedics) but shall not include the provision of advice by social workers or healthcare workers.

15) Nuclear Risks

any **claim** caused by or contributed to by, or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

16) Pollution

any actual alleged or threatened **pollution** (other than as provided for under Automatic Extension of Cover 2 (Sudden and Accidental Pollution) in Section 2) (Public and Products Liability).

17) Sanctions

any **claim** to the extent that to do so would expose the **underwriter** 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;

18) United States of America and/or Canada

- a) any legal proceedings brought against the **insured** in the courts of the United States of America and/or Canada and/or any territories which come within the jurisdiction of the United States of America and/or Canada or elsewhere under the laws of those countries, or any arbitration or other award entered against the **insured** under the laws of those countries;
- b) any judgment or order wherever obtained for the enforcement of any judgment of the courts of the United States of America or Canada or under the laws of those countries (whether by way of reciprocal agreements or otherwise), or for the enforcement of any arbitration or other award entered against the **insured** under the laws of those countries.

19) War and Terrorism

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

- a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power;
- b) Any act including, but not limited to, the use of force or violence or the threat thereof of any person or group of persons whether acting alone or on behalf of or in connection with any organisation or government committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

This exclusion also excludes loss, **damage**, cost or expense of any nature whatsoever directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

GENERAL POLICY CONDITIONS

The following General Conditions shall apply to the **policy**

1) Alteration

The **insured** must give written notice to the **underwriter** of any alteration during the **period of insurance** which materially affects the risk as soon as practicable after becoming aware of such alteration. Such notice should be provided to isure Pty Limited at the address stated in the **schedule**. On receipt of such notice the **underwriter** may:

- a) vary the terms of the **policy** and/or charge such reasonable additional amount as it may determine appropriate having regard to the nature of the risk assumed by the **underwriter**; or
- b) elect to terminate the **policy** in accordance with its right at law, including under the Insurance Contracts Act 1984 (Cth).

In the event that the **underwriter** charges an additional premium then the **insured** may have the option of cancelling the **policy** in accordance with General Policy Condition 4) Cancellation.

2) Adjustment – Directors and Officers Indemnity

- a) If after the inception of this **policy** and during the **period of insurance** the **insured** acquires or creates a **subsidiary**, the indemnity afforded under Section 3. (Directors and Officers Indemnity) in relation to such **subsidiary** shall attach from the date of acquisition or creation for subsequent acts, provided that if the **subsidiary**:

- i) exceeds 25% of the consolidated assets of the **insured**; or
- ii) is listed on any stock exchange anywhere in the world

then no indemnity shall be afforded in relation to such **subsidiary** without the prior written consent (which shall not be unreasonably withheld) of the **underwriter**. In this event the **underwriter** reserves the right to review the terms and conditions of this **policy** and may:

- iii) vary the terms of the **policy** and/or charge such reasonable additional amount as it may determine appropriate having regard to the nature of the risk assumed by them; or
- iv) elect to terminate the **policy** in accordance with its rights at law, including under the Insurance Contracts Act 1984 (Cth).

In the event that the **underwriter** charges an additional premium then the **insured** may have the option of cancelling the **policy** in accordance with General Policy Condition 4) Cancellation.

- b) If during the **period of insurance** an entity ceases to be a **subsidiary**, or ceases to be a **subsidiary** during any insurance of which this is a renewal, the following provisions apply:
 - i) there shall be no coverage for subsequent **wrongful acts** relating to that **subsidiary**;
 - ii) the indemnity afforded to that **subsidiary** shall continue for the remainder of the **period of insurance** in respect of any **claim** arising from a **wrongful act** committed prior to the date the entity ceased to be a **subsidiary**.

3) Assignment

The **insured** cannot assign this **policy** or any rights under it without the prior written consent of the **underwriter** by way of **endorsement**.

4) Cancellation

This **policy** may be cancelled by the **underwriter** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth). If the **policy** is cancelled, the **insured** shall be entitled to a rebate equal to the proportionate part of the premium corresponding to the unexpired portion of the **period of insurance**.

This **policy** may be cancelled by the **insured** at any time by giving written notice to the **underwriter**. In such case, if no **claim** has been made or **occurrence** or circumstance or other matter triggering coverage under the **policy** has been notified prior to such cancellation the **insured** will be entitled to retain the premium for the period during which the **policy** has been in force and shall be entitled to a refund of the unexpired premium.

Otherwise, in the event that the **insured** notifies the **underwriter** of an **occurrence** or circumstance or other matter triggering coverage under the **policy** then the premium shall be deemed fully earned at cancellation and there will be no return of premium by the **underwriter** to the **insured**. In the event that a **claim** is made after cancellation of the **policy** then **we** shall retain the right to offset the unexpired premium amount against the agreed claim amount.

5) Changes to Policy

The terms of the **policy** shall not be waived or amended except by **endorsement** issued by the **underwriter** in accordance with the provisions of Section 53 of the Insurance Contracts Act 1984 (Cth).

6) Confidentiality

The **insured** shall not disclose the terms of this **policy** or the amount of premium paid to any third party:

- a) except to the extent that the **insured** is required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or
- b) except that the existence of the **policy** and the **limit of indemnity** may be disclosed to an insurer, to a client or a prospective client or broker where this is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where the **insured** is aware or should have reasonably been aware that the person to whom disclosure is going to be made had made or is likely to make a **claim**; or
- c) except to the extent that the **underwriter** consents in writing to such disclosure.

7) Enforceability

In the event that any portion of the **policy** is found to be invalid or unenforceable the remainder shall remain in full force and effect

8) Interpretation

The **policy** and the **schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **policy** or the **schedule** shall bear such specific meaning wherever it may appear.

9) Law and Jurisdiction

The meaning, validity and effect of this **policy** will be interpreted in accordance with the law of the Commonwealth of Australia and the Courts of the Commonwealth of Australia will have exclusive jurisdiction in any dispute hereunder.

10) Reasonable Precautions

The **insured** shall:

- a) take reasonable precautions to:
 - i) prevent any circumstances or to cease any activity which may give rise to liability under this **policy**; and
 - ii) maintain all buildings, furnishings, ways, works, machinery, plant and vehicles in sound condition; and
- b) as soon as practicable after discovery cause any defect or danger in respect of **products**, buildings, fittings, furnishings, plant, or machinery to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require.

11) Several Liability of Insurers

The obligations of the subscribing insurers where there is more than one insurer named in the **schedule** subscribing to this **policy** 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 reasons does not satisfy part or all of its obligations.

12) Titles and Headings

Titles and Headings are descriptive and are used solely for convenience of reference and shall not be deemed to limit or affect the provisions to which they relate in any way.

13) Waiver of Subrogation Rights

The **insured** shall not surrender any right of recovery that it may have against another party without the **underwriter's** prior written consent. Failure to comply with this condition may permit the **underwriter** to reduce any payment under this **policy** to the extent that prejudice has been suffered.

1) Action by the Insured

- a) The **insured** shall give written notice to the **underwriter** as soon as reasonably practicable of any:
- i) **claim**; and
 - ii) loss; and
 - iii) **occurrence**; and
 - iv) discovery of any cause for suspicion of any dishonest or fraudulent act or omission
- regardless of any **deductible** that may apply.

In respect of Section 1. (Professional Indemnity) and Section 3. (Directors and Officers Indemnity) such notice must in any event be given during the **period of insurance**.

Every letter, **claim**, writ, summons and process in connection with such circumstances shall be forwarded to the **underwriter** as soon as practicable on receipt.

The notice must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against the **insured**, identification of the project and services giving rise to the **claim** or potential **claim** and the potential quantum, if known, involved in the **claim**.

- b) The **insured** shall also give written notice to the **underwriter** as soon as reasonably practicable with full particulars of any circumstances of which the **insured** shall become aware, which could reasonably be expected to give rise to a **claim**.
- c) The notice shall include the reasons for the belief that the circumstance is reasonably expected to give rise to a **claim**

In respect of Sections 1. (Professional Indemnity) and Section 3. (Directors and Officers Indemnity) of this **policy** only, any **claim** subsequently arising from a circumstance notified to the **underwriter** shall be deemed to have been made during the **period of insurance** in which notice of such circumstance was first received by the **underwriter**.

Such notice required under clause 1 a) and 1 b) above shall be provided to Isure Pty Limited at the address stated in the **schedule**

- d) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the **insured** without the prior written consent of the **underwriter**.
- e) The **insured** shall not surrender any right to, or settle any **claim** for, contribution, recovery or indemnity from any other party without the written consent of the **underwriter**.
- f) The **insured** shall give all assistance as the **underwriter** and its representatives may reasonably require.
- g) The **insured** shall use due diligence and shall ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **claim** or loss.

Compliance with this condition shall be at the **insured's** own cost.

2) Conduct of the Claim

- a) The **underwriter** shall be entitled but not obliged to take over and conduct in the name of the **insured** for its own benefit and shall have full discretion in the conduct of any proceedings and in the settlement of any **claim**.
- b) The **underwriter** shall be entitled to select and appoint lawyers or other parties that will defend and represent the **insured** in respect of any **claim**.
- c) Subject to General Claims Condition 6) (Right to Contest), the **underwriter** shall be entitled to settle a **claim** at its sole discretion.
- d) If the **underwriter** believes that a **claim** will not exceed the **deductible**, it may require the **insured** to conduct the defence of the **claim** at its own expense.
- e) The **underwriter** shall be entitled but not obliged to tender any remaining amount of the **limit of indemnity** to the **insured** at any time, whereupon the **underwriter's** liability for **defence costs** incurred after the date of tender shall cease.

3) **Interlocking Clause**

No request for indemnity shall be made under both Section 1. (Professional Indemnity) and 2. (Public And Products Liability) of this **policy** in respect of any one **claim, loss or occurrence**.

Furthermore, it is agreed that if, in the event that any **claim, loss or occurrence** triggers indemnity under both Sections of the **policy** in respect of such **claim or occurrence**, the only right to indemnity shall be under that section with the highest remaining **limit of indemnity** and not under both.

4) **Right to Contest**

If the **underwriter** recommends settlement in respect of any **claim** and the **insured** does not agree that such **claim** should be settled, then the **insured** may elect to contest the **claim** provided that the maximum amount payable by the **underwriter** in respect of such **claim** shall not exceed the amount for which the **claim** could have been settled plus the **defence costs** incurred up to the date of such election.

5) **Rights of the Underwriter**

In the event that the **underwriter** is entitled to avoid or repudiate the **policy** ab initio, the **underwriter** may instead, at its election, give notice in writing to the **insured** that it regards the **policy** as of full force and effect save that there shall be excluded from any insurance afforded hereunder any **claim** which has arisen or which may arise and which is related to the circumstances which entitle the **underwriter** to avoid or repudiate the **policy**. This **policy** shall then continue in full force and effect, but shall be deemed to exclude the particular **claim** referred to in the said notice.

6) **Senior Counsel**

- a) The **underwriter** shall not require the **insured** to contest a **claim** unless a Senior Counsel (agreed upon by the **insured** and the **underwriter** or failing such agreement to be nominated by the Chairman of the New South Wales Bar Association or where appropriate by a similar official of any similar body in any other State or Territory) advises that the **claim** should be contested taking into account all likely costs, prospects of success and the damages and costs likely to be recovered by the third party claimant.
- b) The cost of Senior Counsel's advice shall be regarded as part of the **defence costs**.

7) **Subrogation and Waiver of Rights**

The **underwriter** shall be subrogated to all the rights of recovery of the **insured** against any third party before and after any indemnity is given under this **policy** provided always that the **underwriter** shall not exercise any such rights against any **employee** unless the **claim** in respect of which the indemnity is afforded under this **policy** was caused by or contributed to by serious or wilful misconduct by the **employee** or former **employee**.

The **insured** shall, without charge, provide such assistance as the **underwriter** may require in any subrogation.

In the event that any amount is recovered by the **underwriters** it shall first be allocated against any amount previously incurred by the **underwriters** with any surplus thereafter being payable to the **insured**.

For the purposes of the following General Insurance Code of Practice and Privacy Notice all references to:

“you” or “your” has the same meaning as the “Insured” as defined in the Definitions Section of the policy wording;
“we”, “our”, “us” or “Insurer”, has the same meaning as “Underwriter” as defined in the Definitions Sections of the policy wording.

GENERAL INSURANCE CODE OF PRACTICE

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

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

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

Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact in the first instance:

isure Pty Limited
Postal Address: Level 2, 235 St Georges Terrace, Perth WA 6000 | PO Box 7415, Cloisters Square WA 6850 Phone: 1800 447 873
Email: customercare@isureonline.com.au

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited
Email: ldraustralia@lloyds.com Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

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

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

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

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

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd’s Underwriters’ General Representative in Australia
Suite 1603, Level 16
1 Macquarie Place
Sydney NSW 2000
who has authority to accept service on the Underwriters’ behalf;

(ii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

isure Pty Limited
Postal Address: Level 2, 235 St Georges Terrace, Perth WA 6000 | PO Box 7415, Cloisters Square WA 6850 Phone: 1800 447 873
Email: customercare@isureonline.com.au

PRIVACY NOTICE

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this. This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on www.msamlin.com/en/site-services/data-privacy-notice.html. A paper copy of the Data Privacy Notice can be obtained by contacting the Data Protection Officer by email (dataprotectionofficer@msamlin.com) or at the below address:

Data Protection Officer
MS Amlin
MS Amlin Corporate Services
The Leadenhall Building
122 Leadenhall Street London
EC3V 4AG

Taxes

There may be circumstances where taxes may be due that are not paid via the **underwriter**. If this occurs then it is the **insured's** responsibility to ensure that these are paid direct to the appropriate authority.

Our Regulator

MS Amlin are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority under reference number 204918. MS Amlin are regulated in England No. 2323018. Registered office: The Leadenhall Building, 122 Leadenhall Street, London, EC3V 4AG.

isure Pty Ltd is a Lloyd's coverholder and an authorised agent of certain underwriters at Lloyd's Limited.

isure Pty Ltd is an authorised representative (ARN 437064) of Arthur J. Gallagher & Co (Aus) Ltd



isure

A Gallagher Company

Ph: 1800 447 873

E: info@isureonline.com.au

**Level 2 / 235 St Georges Terrace
Perth WA 6000**

isureonline.com.au