



AIG AUSTRALIA LIMITED

Architects & Engineers Professional Indemnity

Policy Wording



Important Notices

This **Policy** is issued/insured by AIG Australia Limited (AIG), ABN 93 004 727 753 AFSL No 381686

Sydney: Level 19, 2 Park Street, NSW 2000 (1300 030 886)
Melbourne: Level 12, 717 Bourke Street, VIC 3008 (1300 030 886)
Brisbane: Level 11, 120 Edward Street, QLD 4000 (1300 030 886)
Perth: Level 11, 108 St. George Terrace, WA 6000 (1300 030 886)

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.

Subject to the Cancellation General Provision, 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 and Notified

This Policy contain *claims-made and notified* Insurance Covers and extensions. This means that those Insurance Covers and extensions will only cover **Claims** first made against you during the **Policy Period** and notified to the **Insurer** as soon as practicable in the **Policy Period** or any applicable extended reporting period. This **Policy** may not provide cover for any **Claims** made against you if at any time prior to the commencement of this **Policy** you became aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where you gave notice in writing to an insurer of facts that might give rise to a claim against you as soon as was reasonably practicable after you became aware of those facts but before insurance cover provided by an insurance contract expires, 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 cover provided by the contract.

This **Policy** excludes prior **Claims** and circumstances as outlined in the "Prior Claims and Circumstances" Exclusion.

Privacy Notice

This notice sets out how AIG collects, uses and discloses personal information about:

- you, if an individual; and
- other individuals you provide information about.

Further information about our Privacy Policy is available at www.aig.com.au or by contacting us at australia.privacy.manager@aig.com or on 1300 030 886.

How we Collect your Personal Information

AIG usually collects personal information from you or your agents.

AIG may also collect personal information from:

- our agents and service providers;
- other insurers;
- people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners;
- third parties who may be arranging insurance cover for a group that you are a part of;
- providers of marketing lists and industry databases; and
- publically available sources.

Why we Collect your Personal Information

AIG collects information necessary to:

- underwrite and administer your insurance cover;
- improve customer service and products and carry out research and analysis, including data analytics; and
- advise you of our and other products and services that may interest you.

You have a legal obligation under the Insurance Contracts Act 1984 to disclose certain information. Failure to disclose information required may result in AIG declining cover, cancelling your insurance cover or reducing the level of cover, or declining claims.

To whom we Disclose your Personal Information

In the course of underwriting and administering your policy we may disclose your information to:

- your or our agents, entities to which AIG is related, reinsurers, contractors or third party providers providing services related to the administration of your policy;
- banks and financial institutions for policy payments;
- your or our agents, assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim;
- entities to which AIG is related and third party providers for data analytics functions;
- other entities to enable them to offer their products or services to you; and
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

AIG is likely to disclose information to some of these entities located overseas, including in the following countries: United States of America, Canada, Bermuda, United Kingdom, Ireland, Belgium, The Netherlands, Germany, France, Singapore, Malaysia, the Philippines, India, Hong Kong, New Zealand as well as any country in which you have a claim and such other countries as may be notified in our Privacy Policy from time to time.

You may request not to receive direct marketing communications from AIG.

Access to your Personal Information

Our Privacy Policy contains information about how you may access and seek correction of personal information we hold about you. In summary, you may gain access to your personal information by submitting a written request to AIG.

In some circumstances permitted under the Privacy Act 1988, AIG may not permit access to your personal information. Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

Complaints

Our Privacy Policy also contains information about how you may complain about a breach of the applicable privacy principles and how we will deal with such a complaint.

Consent

If applicable, your application includes a consent that you and any other individuals you provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

Copyright

The content of this policy wording, the schedule and any endorsement or notice we give you in writing, including but not limited to the text and images therein, and their arrangement, is the copyright property of AIG. All rights reserved. AIG hereby authorises you to copy and display the content herein, but only in connection with AIG business. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to AIG; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this policy wording, the schedule and any endorsement or notice we give you in writing, without the prior written permission of AIG. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of AIG or of any third party.

Dispute Resolution Process

We are committed to handling any complaints about our products or services efficiently and fairly.

If you have a complaint:

- (i) contact your insurance intermediary and they may raise it with us;
- (ii) if your complaint is not satisfactorily resolved you may request that your matter be reviewed by management by writing to:

The Compliance Manager
AIG Australia Limited
Level 12, 717 Bourke Street
Docklands Vic 3008

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In consideration of the payment of the **Premium** and subject to all the provisions of this **Policy**, the **Insurer** agrees as follows:

1. Insurance Covers

All cover under this **Policy** is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and notified to the **Insurer** as required by this **Policy**.

Professional Liability

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services**.

Advanced Defence Costs

The **Insurer** will pay **Defence Costs** incurred in defending any **Claim** covered under this **Policy**.

The **Insurer** shall advance **Defence Costs** and all other costs and expenses payable in accordance with “*Insurer Response*” Claims Condition.

(THIS AREA IS INTENTIONALLY LEFT BLANK)

2. Standard Extensions

The **Insurer** agrees to extend indemnity as stated in each of the following Standard Extensions which have the word “Yes” appearing next to them in the “Included” column of the Schedule. If included, cover under the Standard Extension will be subject to all the terms, conditions, definitions and exclusions of this **Policy** unless otherwise stated in the Standard Extension.

Court Attendance

For any natural person described in the Schedule who actually attends court as a witness in connection with a **Claim** notified under and covered by this **Policy**, **Defence Costs** will include the amount specified in the Schedule on which attendance in court has been required.

Defamation

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for defamation, libel or slander committed by an **Insured**. No cover is provided under this extension where the defamation, libel or slander is committed intentionally by an **Insured**.

Extended Reporting Period

If the **Insurer** cancels or does not renew this **Policy**, other than for non-payment of **Premium** or for any other breach of the terms of this **Policy** by an **Insured**, the **Policyholder** shall have the right to an *Extended Reporting Period* of 30 days following the date of cancellation or expiry in which to give notice of any **Claim** first made against the **Insured** for civil liability arising from **Professional Services** performed on or prior to the expiry of this **Policy**.

The above *Extended Reporting Period* shall not apply if a **Transaction** occurs.

In the event that a **Transaction** occurs during the **Policy Period**, the **Policyholder** shall be entitled to request an *Extended Reporting Period* of up to 84 months following the expiry of this **Policy** in which to give notice of any **Claim** first made against the **Insured** for civil liability arising from **Professional Services** performed prior to the effective date of the **Transaction**.

The *Extended Reporting Period* immediately above shall: (i) only be available if the **Policyholder** requests the *Extended Reporting Period* prior to the expiry of the **Policy Period** and the **Insurer** accepts the request; (ii) be provided on such terms and conditions and for such additional premium as the **Insurer** may reasonably decide; and (iii) be subject to the **Limits of Liability** and **Retention**.

Fraud/Dishonesty

Notwithstanding the “*Fraud & Dishonesty*” Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for **Fraud/Dishonesty** by any:

- (i) **Employee**; or
- (ii) any natural person who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**.

No cover is available under this Standard Extension:

- (a) to any **Insured** who has committed or condoned the **Fraud/Dishonesty**; or
- (b) for or in respect of a **Claim** arising out of, or in any way connected with, loss of **Money**.

Intellectual Property/Confidentiality

Notwithstanding the “*Intellectual Property/Confidentiality*” Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for any breach of **Intellectual Property Rights** by the **Insured**. No cover is available under this Standard Extension for **Claims** resulting from any intentional breach of **Intellectual Property Rights**.

Indemnity/Hold Harmless

Notwithstanding the “*Assumed Liability*” Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of the **Professional Services** which is made under an indemnity and/or hold harmless term of a written construction contract or deed entered into with a **Third Party** by the **Policyholder** or a **Subsidiary** but only to the extent the liability of the **Insured** under the indemnity and/or hold harmless term of the construction contract or deed arises from the performance of the **Professional Services**.

Inquiry Costs

The **Insurer** will pay on behalf of the **Insured** **Inquiry Costs** to prepare and attend an **Inquiry**, provided that the notice requiring the **Insured** to attend the **Inquiry** is first served on the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period**.

Joint Ventures

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** in connection with any association or joint venture of which the **Insured** forms part; provided, however, that the **Insurer** shall only be liable for the proportion that represents the **Insured’s** liability in such association or joint venture. No cover is provided to any associate or joint venture partner of the **Insured**.

Lost Documents

Notwithstanding the “Cyber” Exclusion, with respect to a **Third Party’s** Document:

- (i) for which an **Insured** is legally responsible, and
- (ii) that, during the **Policy Period**, has been destroyed, damaged, lost, distorted solely in the performance of **Professional Services**, the **Insurer** will pay on behalf of the **Insured**, up to the Sub Limit of Liability set out in the Schedule, the reasonable and necessary costs and expenses incurred by the **Insured** in replacing or restoring such **Third Party Documents** provided that:
 - (a) such loss, damage or destruction or distortion is first discovered and reported to the **Insurer** during the **Policy Period**;
 - (b) such loss, damage, destruction or distortion is sustained while the **Third Party Documents** are either:
 - (ii) in transit; or
 - (iii) in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them;
 - (c) the lost or mislaid **Third Party Documents** have been the subject of a diligent search by or on behalf of the **Insured**;
 - (d) the amount of such costs and expenses shall be supported by evidence of expenditure that shall be subject to written approval by a competent person to be nominated by the **Insurer** with the consent of the **Insured**; and
 - (e) the **Insurer** shall not be liable for costs and expenses arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Insured’s** control.

Misleading or Deceptive Conduct

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for any **Misleading or Deceptive Conduct**.

New Subsidiaries

The “Subsidiary” Definition is deemed to include any entity or company created and/or acquired by the **Policyholder** during the **Policy Period**.

The **Insurer** will provide cover to any entity or company that becomes a **Subsidiary** of the **Policyholder** during the **Policy Period** at nil additional premium for a period of 45 days from the effective date of the entity or company becoming a **Subsidiary** (but not beyond the **Policy** expiry date, or any *Extended Reporting Period*), provided always that:

- (i) the preceding annual gross revenue of the entity or company does not exceed 10% of the **Policyholder’s** annual revenue;
- (ii) the entity or company is not incorporated in the United States of America; or
- (iii) the entity or company has not had any paid or incurred Professional Indemnity claims in the past 5 years.

During the 45 days, the **Policyholder** will provide full details to the **Insurer** of the entity or company and the **Insurer** in its absolute discretion will have the option to continue to cover the entity or company and to apply any terms and conditions to the extension of cover, including but not limited to charging additional premium.

Cover for any such entity or company that becomes a **Subsidiary** shall only apply to a **Claim** or loss insured by this **Policy** arising from the performance of **Professional Services** by such entity or company while it is a **Subsidiary** of the **Policyholder**.

Technology Services

Notwithstanding the “Motor Vehicles /Aircraft/Watercraft” Exclusion and the “Cyber” Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Technology Services** where the **Technology Services** are performed as part of the performance of **Professional Services**.

Vicarious Liability

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of the **Insured’s Professional Services** by any specialist designer, **Agent** or consultant acting on the **Policyholder’s** behalf and for whom an **Insured** is legally liable.

For the avoidance of doubt, the **Insurer** will not be liable for the **Agent’s** own liability, or be prevented from pursuing a recovery from any **Agent**, nor will it be liable under this Standard Extension for any vicarious liability for any contractual liability assumed by the **Agent** under a contract.

Warranties

The **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and or any legislation of any State, Territory of the Commonwealth of Australia.

3. Optional Extensions

The **Insurer** agrees to extend indemnity as stated in each of the following Optional Extensions which have the word “Yes” appearing next to them in the “Included” column of the Schedule. If included, cover under the Optional Extension will be subject to all the terms, conditions, definitions and exclusions of this **Policy** unless otherwise stated in the Optional Extension.

Claims Mitigation Costs

The **Insurer** will indemnify the **Insured** for the **Insured’s** reasonable direct costs and expenses that the **Insurer** is reasonably satisfied are necessarily incurred as a result of reasonable and necessary rectification or mitigation action taken by the **Insured** to avoid or reduce the amount of any **Claim** that would be covered under this **Policy**, provided that each of the following conditions precedent are required to be met before the **Insurer** shall become liable to indemnify:

- (i) the **Insured** first became aware of the facts that might give rise to the **Claim** during the **Policy Period**;
- (ii) the **Insurer** is informed in writing during the **Policy Period** of the circumstance likely to give rise to the **Claim** that would be covered under this **Policy** and the rectification or mitigation action that is required to avoid or reduce the amount of any **Claim** that would be covered under this **Policy**;
- (iii) direct costs and expenses shall not include any element of profit or loss of profit, costs and expenses of materials or **Professional Services**, which results in an increased quality from that specified in the relevant contract, nor any element of overheads, staff remuneration, standing idle time or management time of the **Insured**; and
- (iv) the **Insurer** has consented in writing to the payment of such direct costs and expenses before work is carried out, such consent not to be unreasonably withheld.

Claims Preparation Costs

The **Insurer** will indemnify the **Insured** for the **Insured’s** reasonable and necessary professional fees or other related external expenses, incurred at the **Insurer’s** request in the preparation of a submission for a **Claim** that would be covered under this **Policy**.

Costs in Addition

Notwithstanding the “*Limit of Liability*”, **Defence Costs** covered under this **Policy** are payable in addition to the **Limit of Liability** unless otherwise specified in the **Policy**.

The maximum amount the **Insurer** will pay for any **Defence Costs** covered under this **Policy** shall not exceed the amount shown in the Schedule for “*Cost in Addition Optional*” Extension.

In the event that the **Insured’s** liability exceeds the **Limit of Liability**, the **Insurer’s** liability in respect of **Defence Costs** covered under this **Policy** is limited to that proportion of such **Defence Cost** that the **Limit of Liability** represents to the total amount of the final judgment, or award or settlement amount.

Continuous Cover

In the absence of fraudulent non-disclosure or misrepresentation, where a **Claim** that would otherwise be covered by this **Policy** is excluded by subparagraph (ii) of the “*Prior Claims/Circumstances*” Exclusion, then cover is provided under this **Policy** for that **Claim** arising from the performance of **Professional Services**, provided always that:

- (i) the **Insured** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**;
- (ii) the cover shall be in accordance with the provisions of the **Previous Policy** in force when the **Insured** first became so aware;
- (iii) there would have been an entitlement to cover under the **Previous Policy** referred to in (ii) above had the notification of the **Claim** been made to the insurer of the **Previous Policy** referred to in (ii) above, but the **Insured** is no longer entitled to cover under that **Policy**;
- (iv) the **Insured** has been insured under a professional indemnity **Policy**, without interruption, between the **Policy** period of the **Previous Policy** referred to in (ii) above and this **Policy**;
- (v) the **Claim** has not been notified under the **Previous Policy** referred to in (ii) above;
- (vi) the amount of the **Claim** for which the **Insurer** shall be liable under this extension is the lesser of:
 - (a) that which would have been available under the **Previous Policy** referred to in (ii) above had the **Claim** been properly notified; and
 - (b) the available remaining **Limit of Liability** of this **Policy**;
- (vii) this extension does not provide an additional **Limit of Liability** and any amount payable under this extension is part of, and not payable in addition to, the **Limit of Liability**; and
- (viii) entitlement to cover under this extension is conditional upon receipt of a copy of the **Previous Policy** referred to in (ii) above schedule, policy wording, any additional endorsements and a copy of the proposal form submitted to the previous insurer for underwriting review.

Joint Venture Partner's Liability

Notwithstanding the "Assumed Liability" Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** by a joint venture partner where the **Insured** has assumed such liability under a contract with any joint venture, and such contracts are specified in the **Joint Venture Partner** Liability Contract List in the Schedule to this **Policy** or listed in an Endorsement to this **Policy**.

Limitation of Liability

Notwithstanding the "Subrogation" General Provision and the "Limitation of Liability" Exclusion, where an **Insured** enters into a written contract with a **Third Party** relating to the performance of **Professional Services** which excludes or limits the liability of such **Third Parties**, such contracts will not prejudice the **Insured's** right to indemnity under the **Policy**. The indemnity provided for by this Extension does not apply to contracts (whether or not they are written contracts) entered into as a result of a dispute which in any way involves the **Insured**.

Novated Contracts

Notwithstanding the "Assumed Liability" Exclusion the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** by the **Insured** under a contract for the performance of **Professional Services** which an **Insured** has assumed by reason only of that contract having been novated under a written contract to the **Insured** (the "**Novated Contract**") but only if:

- (i) the **Novated Contract** results in the **Insured** assuming responsibility for **Professional Services** which were previously to be undertaken by a **Third Party**; or
- (ii) the **Novated Contract** is entered into as direct consequence of the **Insured** purchasing or acquiring another business or contract from a **Third Party**;

and provided that:

- (a) the **Insurer's** subrogation rights against all parties to the **Novated Contract** have not been impaired;
- (b) the **Novated Contract** is specified in the Novated Contracts List in the Schedule to this **Policy** or listed by an endorsement to this **Policy**;
- (c) the **Novated Contract** is not entered into as a result of a dispute which involves the **Insured** in any way; and
- (d) the liabilities arising in connection with the **Novated Contract** would have been covered by the **Policy** prior to the novation.

Pollution

Notwithstanding the "Pollutants" Exclusion and subparagraph (iii) of the "Uncovered Services" Exclusion, the **Insurer** will indemnify the **Insured**, up to the Sublimit of Liability set out in the Schedule, against civil liability resulting from any **Claim** arising from the performance of **Professional Services** which is for a sudden, identifiable, unintended and an unexpected event that results in the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of **Pollutants**.

Principal's Indemnity

Subject to each of the Conditions set out below, this **Policy** extends to indemnify the **Principal** as an **Insured** under the 'Insurance Covers' Section of the **Policy**.

The following conditions apply to this Extension:

- (i) the **Principal** is liable to pay for all **Retention** amounts due under this Extension, and if the **Principal** fails or refuses to pay, the **Policyholder** is instead liable to pay the **Retention** amounts; and
- (ii) the **Principal** is deemed to be an **Insured** for the purposes of the "Notification of Claims" Condition; and
- (iii) the **Principal** will comply with all the other terms and conditions of this **Policy** in so far as they can apply; and
- (iv) the **Insurer** will pay **Defence Costs** and other **Insured** amounts for **Claims** covered under this Extension on the basis set out in this **Policy**; and
- (v) cover will only be available under this Extension provided that if a **Claim** had been made directly against the **Insured**, the **Insured** would have been entitled to indemnity by this **Policy**;
- (vi) cover will only be available under this Extension to the extent required by the contract between the **Insured** and the **Principal**.

Proportionate Liability

Notwithstanding the "Assumed Liability" Exclusion and the "Proportionate Liability" Exclusion, the **Insurer** will indemnify the **Insured** against civil liability resulting from any **Claim** arising from the performance of **Professional Services** where:

- (i) the **Insured** has agreed in writing with a **Principal** to contract out of **Proportionate Liability Legislation**; and
- (ii) the **Insured** is permitted by law to contract out of **Proportionate Liability Legislation**.

Reduction of Retention

Notwithstanding the “Retention” Provision, where the **Retention** for this **Policy** is \$25,000 or less, the **Insurer** will reduce the **Retention** by 50% if:

- (i) the **Insured** is able to settle any **Claim** that would be covered under this **Policy** in accordance with this **Policy**;
- (ii) the **Insurer** has consented to the settlement of the **Claim**; and
- (iii) no party involved in the **Claim** (including any **Insured**, **Insurer** or **Third Party**) has retained a lawyer to act on their behalf in relation to the **Claim**.

This extension will not apply to the “Claims Preparation Costs”, and/or the “Lost Documents” Standard Extensions, and/or the “Statutory Liability” Optional Extension.

Reinstatement Limit of Liability

If the **Limit of Liability** is exhausted by any **Claim**, **Claims** and/or **Defence Costs** during the **Policy Period**, subject to the provisions below **Insurers** will reinstate the **Limit of Liability** once for any subsequent **Claims** arising from the performance of **Professional Services** made during the **Policy Period**.

If the **Policyholder** has in effect any excess layer policy or policies providing excess layer coverage for limits in excess of the **Limit of Liability**, including but not limited to the excess insurance policies specified in the Other Insurance List in the Schedule, the reinstatement provided will become effective only after the total exhaustion of the limits of all such excess coverage by reason of the payment of indemnity thereunder but prior to any similar reinstatement provision contained in such policy or policies becoming effective.

It is the intention of this extension, and it is agreed that, that the sum reinstated shall:

- (i) provide cover in respect of subsequent **Claims** arising from the performance of **Professional Services** which are totally unrelated to the **Claims** or circumstances that give rise to the **Claims** already notified at the time the **Limit of Liability** is exhausted;
- (ii) not apply to the balance of any **Claim** which contributed to the exhaustion of the **Limit of Liability** once the **Limit of Liability** is so exhausted;
- (iii) not apply to any Standard Extension, Optional Extension or for which a Sub Limit of Liability is set out in the Schedule or otherwise provided for in this **Policy**, or the “Public Relations Expenses” Risk Management Extension; and
- (iv) not apply to any grant of the “Extended Reporting Period” Extension.

The liability of the **Insurers** in respect of all **Claims** resulting from:

- (a) the same cause, or
- (b) a single act or omission, or
- (c) a series of continuous, repeated or related act or omission, or
- (d) the dishonesty or infidelity of any one person or in which such person is concerned or implicated;

shall not exceed the **Limit of Liability**.

No cover under this Extension shall apply if any “Extended Reporting Period” Extension is granted, or during such Extended Reporting Period, including for **Claims** reported during that period.

Statutory Liability

Notwithstanding the “Commercial Management, (vii)” Exclusion, the **Insurer** shall indemnify the **Insured** up to the Sub Limit of Liability set out in the Schedule for any **Fines & Penalties** imposed on the **Insured** for a breach of any **Australian Statute** by the **Insured** arising from the performance of **Professional Services**.

No cover shall be provided pursuant to this extension for:

- (i) any actual alleged deliberate, intentional or reckless act or omission;
- (ii) for any actual or alleged breach of any law or regulation with respect to any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another’s business or contractual relationships;
- (iii) for any actual or alleged breach of any law or regulation with respect to tax, rate, duty, levy, charge, fee or any other revenue charge or impost;
- (iv) for any actual or alleged breach or any law or regulation with respect to vehicular, air or marine traffic;
- (v) amounts representing damages or compensation;
- (vi) any compliance, remedial, reparation or restitution costs: or
- (vii) any amount which the **Insurer** is prohibited from paying at law.

For this Optional Extension only, the “Insured” Definition is deleted and replaced with the following definition:

Insured means **Policyholder**, **Subsidiary** and any natural person, who is or has been an employee (but not a contractor, subcontractor, consultant, deemed worker or **Agent**), principal, partner or director of the **Policyholder** or any **Subsidiary**.

This Optional Extension is subject to the **Retention** set out in the Schedule.

4. Risk Management Extensions

The **Insurer** agrees to extend indemnity as stated in each of the following Risk Management Extensions which have the word “Yes” appearing next to them in the “Included” column of the Schedule. If included, cover under the Risk Management Extension will be subject to all the terms, conditions, definitions and exclusions of this **Policy** unless otherwise stated in the Risk Management Extension.

BusinessGuard Advisory Panel

During the **Policy Period** the **Policyholder** is entitled to up to one hour of free advice for each enquiry from the *BusinessGuard Advisory Panel* which relates to matters which are relevant to the cover provided under this **Policy**.

The **Insurer** consents to the appointment of any member firm, in the absence of a conflict of interest, to act on behalf of the **Insureds** in respect of any **Claim** notified to the **Insurer**, provided the **Insurer** accepts the notification under the **Policy** and subject always to the “*Claims*” Conditions.

The **Insureds** may access the services of the *BusinessGuard Advisory Panel* by contacting the firms listed as such at www.aig.com.au.

No **Retention** shall apply to this extension.

Public Relations Expenses

The **Insurer** will pay to or on behalf of the **Insured** the reasonable fees, costs and/or expenses incurred by the **Insured** up to the Sublimit of Liability in the Schedule for the use of a **Third Party** public relations consultant provided that the fees, costs and/or expenses are incurred:

- (i) with the prior written consent of the **Insurer**; and
- (ii) for the purpose only of mitigating the adverse effect, or the potential to have an adverse effect, on the **Policyholder’s** or **Subsidiary’s** reputation where the **Professional Services** performed by the **Insured** have given, or could give, rise to a **Claim**.

No **Retention** shall apply to this extension.

5. Exclusions

The **Insurer** shall not be liable to make any payment under this **Policy** for or arising out of:

Assumed or Acquired Liability

any liability of a **Third Party**:

- (i) assumed by the **Insured** unless the **Insured** would in any event be legally liable in the absence of such assumed liability; or
- (ii) incurred prior to such **Third Party** becoming an **Insured** as a direct consequence of the **Insured** purchasing or acquiring another business or contract.

Anti-Competitive

any actual or alleged breach of any law or regulation with respect to any of the following activities: restrictive trade practices, anti-trust, price fixing, predatory pricing, restraint of trade, unfair competition or tortious interference in another's business or contractual relationships. This includes but is not limited to any such conduct in contravention of the *Competition and Consumer Act 2010* (Cth), any Fair Trading Acts enacted by the States or Territories of Australia, *Federal Trade Commission Act* (USA), *Sherman Anti-Trust Act* (USA), *Clayton Act* (USA) or amendments thereto, or similar law or regulation, or such replacement, anywhere else in the world.

Bodily Injury and/or Property Damage

- (i) **Bodily Injury** of any person unless the **Bodily Injury** arises out of the performance of **Professional Services**; or
- (ii) loss of or damage to property unless the loss of or damage to property arises out of the performance of **Professional Services**.

Commercial Management

- (i) any actual or alleged failure by any **Insured** or other party acting for the **Insured** to procure or maintain financing;
- (ii) any actual or alleged failure by any **Insured** or other party acting for the **Insured** to effect or maintain any form of insurance, surety or bond;
- (iii) the insolvency of any party to a project other than the **Insured**;
- (iv) the refund of any professional fees;
- (v) any taxes imposed or payable;
- (vi) any award of non-compensatory damages, including any punitive, aggravated, multiple or exemplary damages;
- (vii) any **Fines & Penalties**;
- (viii) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; or
- (ix) any employment related compensation or benefits including but not limited to any salary, wages, commission or bonus, or overheads, charges or expenses of any **Insured**.

Costs Assessment

any actual or alleged failure by any **Insured** or other party acting for the **Insured** to make an accurate pre-assessment of the cost of performing **Professional Services**, unless the pre-assessment is conducted by a qualified quantity surveyor whom is a member of its professional association, specifically engaged by the **Insured**.

Cyber

any liability or loss arising from any intrusion due to the failure or the circumvention of the security of the **Company's Computer System**, which results in any unauthorised access, unauthorised use, 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 **Company's Computer System**.

Directors & Officers

the **Insured** acting in the capacity of a director or officer.

Employers Liability

Bodily Injury of any **Employee**.

Express Fitness for Purpose

any express fitness for purpose term of a contract.

Fraud & Dishonesty

any **Fraud/Dishonesty** committed by any **Insured** or **Agent**.

This Exclusion will only apply in the event that any of the above is established by final adjudication by a judicial or arbitral tribunal against or any written admission (that has not been withdrawn) by the respective **Insured** or **Agent**.

Insolvency

any **Claim**, written demand, civil or administrative proceedings, or **Inquiry**, or any other matter, arising out of, based upon or attributable to the insolvency, administration, liquidation or receivership of any **Policyholder** or **Subsidiary**.

Intellectual Property/Confidentiality

any actual or alleged breach of, infringement of or misappropriation, whether intentional or unintentional, of any **Intellectual Property Rights**.

Intentional Acts

any deliberate, intentional, reckless or wilful conduct.

Licensing Investigations

any commission, hearing, inquiry, prosecution or other investigation relating to the actual or alleged failure of the **Insured** to be properly licensed, registered or accredited to provide **Professional Services** as required by any law or regulation, including but not limited to industry codes of practice.

Limitation of Liability

an **Insured** having entered into a written contract with any other party which excludes or limits the liability of such parties, including but not limited to any contract entered into as a result of a dispute which the **Insured** is or was a party to.

Liquidated Damages

an award of **Liquidated Damages** levied upon the **Insured** by the construction contract or deed entered into with a **Third Party**, except to the extent that the **Insured** would have been liable for such damage in the absence of any such contract or deed.

Motor Vehicles/Aircraft/Watercraft

any ownership, use, operation, or maintenance of any motor vehicle, aircraft, or watercraft of any kind.

Non-Conforming Products

or in any way connected with any **Non-Conforming Building Products**.

Owners and Occupiers Liability

the ownership, management, occupation or control of real property by or on behalf of any **Insured**.

Pollutants

- (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of **Pollutants**; or
- (ii) any direction, request or effort to:
 - (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**; or
 - (b) respond to or assess the effects of **Pollutants**.

Prior Claims and Circumstances

- (i) any **Claim** made prior to or pending at the inception of this **Policy**;
- (ii) any circumstance that, as of the inception of this **Policy**, may reasonably have been expected by any **Insured** to give rise to a **Claim, Inquiry** or **Fine & Penalty**; or
- (iii) any matter disclosed to an **Insurer** or on any proposal form prior to the inception of this **Policy**.

Prohibited Amounts or Matters

- (i) any amount which the **Insurer** is prohibited from paying by law: or
- (ii) any matter which may be uninsurable under the law governing this **Policy** or the jurisdiction in which a **Claim** is brought.

Product Defects

any actual or alleged defect in any product, material or good unless such defect arises out of the performance of **Professional Services**.

Proportionate Liability

the **Insured** having assumed liability by reason of it having contracted out of **Proportionate Liability Legislation**.

Related Parties

any **Claim** by or on behalf of:

- (i) any **Insured** against another **Insured**, other than a **Claim** for contribution or indemnity which results directly from another **Claim** which would be covered under this **Policy** if made directly against another **Insured**;
- (ii) any **Family**, whether on their own behalf or a trustee of a trust;
- (iii) any **Organisation**; or
- (iv) any **Trust**.

Retroactive Date

any act, error or omission occurring, or **Professional Services** or **Technology Services** performed, prior to the **Retroactive Date**.

Third Party Indemnities

any indemnity, hold harmless or similar term of a contract provided by the **Insured** which is for the benefit of any natural person, company or other entity who is not a party contracting with the **Insured** or the **Principal**.

Trade Debts

any:

- (i) trading debt incurred by an **Insured**; or
- (ii) guarantee given by an **Insured** for a debt.

Uncovered Services

any:

- (i) performance or supervision (where such supervision would normally be undertaken by a **Qualified Person**) of construction, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property;
- (ii) occupational health and safety or industrial relations matters which would normally be performed or supervised by a **Qualified Person**; or
- (iii) environmental protection matters which would normally be performed or supervised by a **Qualified Person**.

War and Terrorism

based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

6. Definitions

The following Definitions shall apply to this **Policy**:

Term(s)	Meaning
Agent	means any natural person, company or other entity who has or had a written contract with the Policyholder or any Subsidiary to provide Professional Services , but solely limited to such Professional Services for and on behalf of Policyholder or any Subsidiary .
Australian Statute	means any statute, regulation or other legislative instrument enacted under the laws of the Commonwealth of Australia, any State or Territory.
Bodily Injury	means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.
Claim	means any: (i) written demand; or (ii) civil or administrative proceedings; that seeks compensation to a Third Party first made or brought against the Insured during the Policy Period .
Company	means the Policyholder and any Subsidiary .
Computer Systems	means any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the Internet or internal network or that are connected through data storage or other peripheral devices which are owned, operated, controlled or leased by the Company . Company's Computer System also includes: (i) any Third Party computer or electronic device (including mobile phones, tablets or computers owned or controlled by an employee of a Company) used to access a Company's Computer System or Data contained therein, but only to the extent such computer or device is used for that purpose; (ii) any employee "Bring Your Own Device" used to access a Company's Computer System or Data contained therein, but only to the extent such device is used for that purpose; and (iii) any cloud service or other hosted computer resources, used by the Company and operated by a Third Party service provider under a written contract between such a Third Party service provider and the Company .
Continuity Date	means the date specified as such in the Schedule.
Data	means any electronically stored digital or digitised information or media stored on the Company's Computer System or an OSP's Computer System .
Defence Costs	means reasonable fees, costs and expenses incurred by or on behalf of the Insured in the investigation, defence, adjustment, settlement or appeal of any Claim . " Defence Costs " shall not mean any internal or overhead expenses of any Insured or the costs of any Insured's time.
Documents	means all documents of any nature whatsoever including computer record and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.
Employee	means any: (i) natural person, other than a director partner or principal, who is or has been expressly engaged as an employee under a contract of employment with the Policyholder or any Subsidiary ; (ii) contractor or consultant who: (a) has a written contract with the Policyholder or Subsidiary to perform Professional Services solely for and on behalf of an Insured ; and (b) is a deemed worker under the workers compensation laws of the Commonwealth of Australia or State or Territory in which the contractor or consultant is performing Professional Services on behalf of any Policyholder or Subsidiary .
Family	means any parent or dependant, child, sibling, spouse or partner of an Insured .
Fines & Penalties	means any fine or pecuniary penalty pursuant to any statute which an Insured is legally liable to pay.
Fraud/Dishonesty	means any actual or alleged fraudulent or dishonest conduct.

Term(s)	Meaning
Inquiry	means an administrative or regulatory proceeding, or official investigation into the performance of Professional Services of the Policyholder or Subsidiary , and that the Policyholder or Subsidiary are compelled to attend.
Inquiry Costs	means reasonable and necessary fees, costs, expenses up to the Sub Limit of Liability set out in the Schedule, and incurred by the Insured with the prior written consent of the Insurer . Inquiry Costs shall not include costs or expenses incurred in connection with any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an Insured's normal review or compliance process, by an industry, government or government appointed regulatory body.
Insured	means: (i) the Policyholder or any Subsidiary ; (ii) any natural person, who is or has been a principal, partner or director of the Policyholder or any Subsidiary ; (iii) any Employee ; and (iv) any temporary contract labour, self-employed persons, labour-only subcontractors, solely under contract with, and under the direction and direct supervision of the Policyholder or any Subsidiary , but only when providing Professional Services in the foregoing capacities. “ Insured ” also includes the lawful spouse or domestic partner in the event of death or incapacitation of an Insured or any estate, or legal representatives of any Insured described in (ii) and (iii) of this definition with respect to the Insured's provision of Professional Services in any such capacity.
Insurer	means AIG Australia Limited (AIG) ABN 93 004 727 753, AFSL 381686, Level 19, 2 Park Street, Sydney, NSW 2000.
Intellectual Property Rights	means any: (i) intellectual property, licenses, copyright, trademark, service mark, registered designs, CAD drawings, drawings, patents, pass off; (ii) Trade Secrets ; and (iii) privacy or confidentiality obligation. of any Third Party .
Limit of Liability	means the amount specified as such in the Schedule.
Liquidated Damages	means an amount of ascertained damages the Insured and Third Party designate during the formation of the construction contract or deed for the Third Party as compensation upon a specific breach as prescribed in the executed construction contract or deed.
Misleading or Deceptive Conduct	means any actual or alleged misleading or deceptive conduct at law or under the <i>Competition and Consumer Act 2010</i> (Cth), <i>Corporations Act 2001</i> (Cth), <i>Australian Securities and Investments Commission Act 2001</i> (Cth), <i>Trade Practices Act 1974</i> (Cth) or any similar provisions in the States' Fair Trading Acts.
Money	means any currency, coins, bank notes, bullion, cheques, travellers' cheques, money orders, postal orders, precious metals, stamps, coupons or cryptocurrencies.
Non-Conforming Building Products	means any building product that is not compliant or does not conform with or is installed, applied or used in a manner that does not comply with the standards set by the Commonwealth Government of Australia or any authority acting on its behalf, or by any State or Territory Government of Australia or any authority acting on their behalf, for that product, including but not limited to all the relevant provisions of: (a) the National Construction Code of Australia; (b) the Building Code of Australia; (c) Australian Standards; (d) approved conditions of use or application, or (e) any other applicable law or regulation.

Term(s)	Meaning
Organisation	means any parent company or other entity which is or has been at any time directly or indirectly owned, controlled or managed by any Insured .
Outside Service Provider ('OSP')	an entity which is not owned, operated or controlled by the Company that the Company has appointed to provide specified services (including webhosting, payment processing and IT security data collection, data processing, delegation of data processing, storage of data and/or deletion or destruction of data) which would otherwise be provided internally whether based on an express contractual agreement, but only to the extent of the provision of such services.
Policy	means this document including the schedule and any endorsement or notice we give you in writing and any information supplied to us in submissions made by you or your insurance broker.
Policy Period	means the period of time specified in the Schedule unless the Policy is cancelled in which event the Policy Period will end on the effective date of the cancellation.
Policyholder	means the entity or natural person specified as such in the Schedule.
Pollutants	means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
Premium	means the amount specified as such in the Schedule and any premium adjustment reflected in an Endorsement to this Policy .
Previous Policy	means any professional indemnity insurance policy held by the Policyholder prior to the inception of this Policy that is specified in the Previous Policy List in the Schedule or in an endorsement to this Policy .
Principal	means a party with whom the Policyholder or Subsidiary has entered into a construction contract or deed to provide Professional Services and who is specified in the Principal List in the Schedule or an endorsement to this Policy .
Professional Services	<p>means the performance in a professional capacity of any of the following services, duties or activities:</p> <ul style="list-style-type: none"> (i) architecture; (ii) civil engineering; (iii) structural engineering; (iv) electrical engineering; (v) mechanical engineering; (vi) landscape design; (vii) interior design; (viii) draftsman services; (ix) town planning; (x) land surveying; (xi) quantity surveying; (xii) project management; (xiii) any other architectural or engineering services as disclosed in the Proposal Form and endorsed to this Policy; <p>provided always that the above services are performed by a Properly Qualified Person or under the direct supervision and control of a Properly Qualified Person.</p>
Properly Qualified Person	means any properly qualified and registered architect, engineer, surveyor or quantity surveyor with the appropriate professional body or any skilful qualified professional person having an established discipline appropriate to the Professional Services being performed or supervised.

Term(s)	Meaning
Proportionate Liability Legislation	means the following legislation, as amended from time to time: <i>Civil Liability Act 2002</i> (NSW) Pt 4, <i>Wrongs Act 1958</i> (Vic) Pt IVAA, <i>Civil Liability Act 2002</i> (WA) Pt 1F, <i>Civil Liability Act 2003</i> (Qld) Pt 2, <i>Civil Law (Wrongs) Act 2002</i> (ACT) Ch 7A, <i>Proportionate Liability Act 2005</i> (NT), <i>Civil Liability Act 2002</i> (Tas) Part 9A, <i>Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001</i> (SA) Pt 3, <i>Competition and Consumer Act 2010</i> (Cth), <i>Development Act 1993</i> (SA) s72, <i>Building Act 2004</i> (ACT) s141 and <i>Building Act 2000</i> (Tas) s252, and any similar legislation.
Qualified Person	means any building contractor, site supervisor, site manager, superintendent or foreman.
Retention	means the amount specified as such in the Schedule.
Retroactive Date	means the date specified as such in the Schedule.
Senior Lawyer	means a senior lawyer to be mutually agreed upon by the Insurer and relevant Insured , or in the absence of agreement, to be appointed by the nominee of the law society (or similar organisation) selected by the Insurer .
Submission	means each and every signed proposal form, including the declarations, statements and representations therein, its attachments, and all other information which is either submitted to the Insurer or incorporated in the proposal form by reference.
Subsidiary	means companies in which the Policyholder either directly or indirectly through one of more of its Subsidiaries : (i) controls the composition of the board of directors; (ii) controls more than half of the voting power; or (iii) holds more than half of the issued share capital. For any Subsidiary or any Insured thereof, cover under this Policy shall only apply to a Claim or loss insured by this Policy arising from the performance of Professional Services by such entity or company while it is a Subsidiary of the Policyholder .
Technology Services	means any of the following services: (i) website design; (ii) computer-assisted design technology; (iii) computer software programs, applications or systems; (iv) digital model, including Building Information Model (BIM) or other equivalent design systems; (v) 3D printing technology; or (vi) use of drones or unmanned aircraft, provided always that such use is performed by a Civil Aviation Safety Authority (CASA) licenced operator or an equivalent Authority, and is conducted in compliance with the relevant guidelines as specified by the Civil Aviation Safety Authority (CASA).
Third Party	means any entity or natural person; provided, however, Third Party does not mean any: (i) Insured ; (ii) other entity or natural person having a direct or indirect financial interest or executive role in the operation of the Policyholder or any Subsidiary .
Trade Secret	means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons.
Transaction	means where the Policyholder : (i) consolidates with, or merges into, or sells more than fifty percent (50%) of its assets or equity to any other person or group of persons acting in concert; (ii) becomes a subsidiary of another entity, or becomes controlled by another entity; or (iii) has an administrator, controller, receiver, receiver and manager, liquidator, or any other external insolvency officeholder, appointed to it.
Trust	means any entity or trustee or former trustee of a trust which is or has been at any time directly or indirectly owned, controlled or managed by any: (a) Insured ; (b) Family ; or (c) Organisation , or of a trust where an Insured or any Family is a beneficiary or the appointor.

7. Claims Conditions

Insurer's Response

The **Insurer** shall:

- (i) acknowledge receipt of any correspondence under the '*Claims Conditions – Notification of Claims*' within two (2) business days; and
- (ii) request any further material it reasonably requires to make its coverage determination within a reasonable time after receipt of the correspondence; and
- (iii) promptly advise the **Insured** of any additional investigation or material it reasonably requires; and
- (iv) within a reasonable time after receipt of all further material referred to in (ii) and (iii); and at the request of the **Insured**, the **Insurer** shall confirm their preparedness to advance any costs and expenses payable under this **Policy** as provided in (vi) below, except to the extent that indemnity has been denied; and
- (v) confirm the assumption of the defence of a **Claim** to the **Insured** in writing within a reasonable time as outlined under '*Defence & Settlement – Defence/Settlement*'; and
- (vi) advance all **Defence Costs** and payment of all other costs and expenses payable under this **Policy**, within a reasonable time after sufficiently detailed invoices for those costs are received and accepted for payment by the **Insurer**.

The timelines herein are premised upon the **Insured** providing notification within ten (10) business days in accordance with '*Claims Conditions – Notification of Claims*' so as to allow the **Insurer** to participate fully as outlined in '*Defence & Settlement – Defence/Settlement*.' The **Insured** may agree to extend these timelines at the request of the **Insurer**, and such agreement is not to be unreasonably withheld.

Notification of Claims

The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this **Policy**, give written notice to the **Insurer** of any **Claim** first made against the **Insured** as soon as practicable and during the **Policy Period** or, if applicable, any Extended Reporting Period. All notifications must be in writing and reference the Policy Number, and addressed as required in the "*Claims Notice*" Item on the Schedule.

Other Insurance

This **Policy** shall always apply excess over any other insurance ('Other Insurance') that the **Insured** has a right to recover and is specified in the Other Insurance List in the Schedule to this **Policy**. This includes the renewal or replacement of such "Other Insurance" during the **Policy Period**.

The **Insurer** shall be notified at the **Insured** earliest convenience any changes to "Other Insurances" in place.

Related Claims

If notice of a **Claim** or loss insured by this **Policy** is given to the **Insurer** pursuant to the terms and conditions of this **Policy**, then:

- (i) any subsequent **Claim** or loss insured by this **Policy** alleging, arising out of, based upon or attributable to the facts alleged in that previously notified **Claim** or loss insured by this **Policy**; and
- (ii) any subsequent **Claim** or loss insured by this **Policy** which is the same as or related to any act or omission alleged in that previously notified **Claim** or loss insured by this **Policy**, shall be considered made against the **Insured** and reported to the Insurer at the time notice was first given.

Any **Claim, Claims** or losses insured by this **Policy** arising out of, based upon or attributable to:

- (i) the same cause; or
- (ii) a single act or omission; or
- (iii) a series of continuous, repeated or related acts or omissions,

shall be considered a single **Claim** or loss for the purposes of this **Policy**.

8. Defence & Settlement

Allocation

Where any **Claim** which arises from both covered matters and matters not covered by this **Policy**, the **Insurer's** liability under this **Policy** is limited to the proportion of the **Claim** which represents a fair and equitable allocation between each **Insured** and the **Insurer**, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this **Policy**.

Allocation Disputes

If the parties are unable to agree on the fair and equitable allocation between covered matters and not covered matters, then this is to be referred for determination by an independent **Senior Lawyer**. The **Senior Lawyer** is to determine the fair and equitable allocation as an expert, not as an arbitrator.

The **Policyholder** (or its designee) and the **Insurer** may make submissions to the **Senior Lawyer**. The **Senior Lawyer** is to take account of the parties' submissions, but the **Senior Lawyer** is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion. The **Senior Lawyer's** determination shall be final and binding. The costs of the **Senior Lawyer's** determination are to be borne by the **Insurer**.

For so long as the amounts to be paid under the **Policy** remains un-agreed and undetermined, the **Insurer** shall pay the proportion which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any amounts incurred prior to agreement or determination.

Cooperation

The **Insured** will at their own cost:

- (i) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Claim** under this **Policy**; and
- (iii) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Claim** or determine the **Insurer's** liability under this **Policy**.

Defence/Settlement

The **Insurer** does not assume any duty to defend, and the **Insured** shall defend and contest any **Claim** made against them unless the **Insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **Claim**. If the **Insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**. The **Insurer** has the right at any time after notification of a **Claim** to make a payment to the **Insured** of the unpaid balance of the **Limit of Liability**, and upon making such payment, all obligations of the **Insurer** to the **Insured** under this **Policy**, including, if any, those relating to defence, shall cease.

In the event that payment is made under the "Advanced Defence Costs" Insurance Cover, and it is determined that such **Insured** is not entitled to such payment under this **Policy**, each **Insured** will repay the **Defence Cost** to the **Insurer** for such amounts paid.

Insurer's Consent

As a condition precedent to cover under this **Policy**, no **Insured** shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any **Defence Costs** without the prior written consent of the **Insurer**. Only those settlements, judgments and **Defence Costs** consented to by the **Insurer**, and judgments resulting from **Claims** defended in accordance with this **Policy**, shall be recoverable under this **Policy**. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to exercise all of its rights under the **Policy**.

Insured's Consent

The **Insurer** may make any settlement of any **Claim** it deems expedient with respect to any **Insured**, subject to such **Insured's** written consent. If any **Insured** withholds consent to such settlement, the **Insurer's** liability on account of such **Claim** shall not exceed the amount for which the **Insurer** could have settled such **Claim**, plus **Defence Costs** incurred as of the date such settlement was proposed in writing by the **Insurer**, less coinsurance (if any) and the applicable **Retention**.

Subrogation

If any payment is to be made under this **Policy** in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured** who, at its own cost, shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery.

9. Limit & Retention

Limit of Liability

Policy Covers, Standard Extensions, Optional Extensions and Risk Management Extensions only apply if shown as “Yes” in “Section Included” in the Schedule.

The total amount payable by the **Insurer** for a single **Claim** or loss (as specified in the “Related Claims” Condition), including **Defence Costs**, shall not exceed the **Limit of Liability**. The total amount payable by the **Insurer** under this **Policy** for all **Claims** or losses **Insured** by this **Policy** shall not exceed the **Limit of Liability**.

Sub Limits of Liability, Standard Extensions, Optional Extensions, Risk Management Extensions and endorsements are part of that amount and are not payable in addition to the **Limit of Liability**.

The **Insurer** shall have no further liability in excess of the aggregate **Limit of Liability** irrespective of the number of **Insureds** or quantum of any matter.

If a Sub Limit of Liability is specified in the Schedule in respect of any Cover or Extension, the **Insurer** shall have no liability in excess of that Sub Limit of Liability for the Cover or Extension.

The **Limit of Liability** for the period provided in the “Extended Reporting Period” Extension is part of, and not in addition to, the **Limit of Liability** for the **Policy Period**.

The inclusion of more than one **Insured** under this **Policy** does not operate to increase the total amount payable by the **Insurer** under this **Policy**.

Retention

The **Insurer** shall only pay for the amount of any **Claim** or other loss insured by this **Policy** which is in excess of the **Retention** set out in the Schedule. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and shall remain uninsured. A single **Retention** shall apply to a single **Claim** or loss (as specified in the “Related Claims” Condition).

10. General Provisions

Administration

The **Policyholder** has acted and shall act on behalf of each and every **Insured** with respect to:

- (i) negotiating terms and conditions of, binding and amending cover;
- (ii) exercising rights of **Insureds**;
- (iii) notices;
- (iv) premiums;
- (v) endorsements;
- (vi) dispute resolution;
- (vii) claims management and consent to defence/settlement; and
- (viii) payments to any **Insured**.

Assignment

This **Policy** and any rights under or in respect of it cannot be assigned without the prior written consent of the **Insurer**.

Cancellation

This **Policy** may be cancelled by the **Policyholder** at any time by providing written notice to the **Insurer**. Where no **Claims**, or other loss insured by this **Policy** or, pursuant to section 40(3) of the *Insurance Contracts Act 1984*, or circumstances that might give rise to a **Claim**, have been notified to **Insurers**, the **Insurer** shall refund the *pro rata* proportion of the premium for the unexpired **Policy Period**.

This **Policy** may be cancelled by the **Insurer** as prescribed by the *Insurance Contracts Act 1984* (Cth).

Non-Imputation & Severability

For the purposes of determining the applicability of cover under this **Policy**:

- (i) where the **Policy** affords cover to more than one party, the failure to comply with the duty of disclosure under the *Insurance Contracts Act 1984* (Cth) or misrepresentation by any **Insured** shall not prejudice the rights of any other **Insured** to cover under this **Policy**; and
- (ii) the conduct of any one **Insured** shall not be imputed to any other **Insured**.

In the event of (i) and (ii) above, cover is only provided where the other **Insured** is innocent of and had no prior knowledge of the failure, misrepresentation or conduct.

Plurals, Headings and Titles

The descriptions in the headings and titles of this **Policy** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this **Policy**, words in **bold** typeface have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

Policy Purchase

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. If the **Insurer** becomes entitled to avoid this **Policy** from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this **Policy** in full force but exclude the consequences of and any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

Sanctions

If, by virtue of any law or regulation which is applicable to the **Insurer**, its parent company or its ultimate controlling entity, at the inception of the **Policy** or at any time thereafter, providing coverage to the **Insured** is or would be unlawful because it breaches an applicable embargo or sanction, the **Insurer** shall provide no coverage and have no liability whatsoever nor provide any defence to the **Insured** or make any payment of defence costs or provide any form of security on behalf of the **Insured**, to the extent that it would be in breach of such embargo or sanction.

Scope and Governing Law

Where legally permissible and subject to the “*Sanctions*” General Provision, this **Policy** shall apply to any **Claim** made against any **Insured** anywhere in the world. Any interpretation of this **Policy** relating to its construction, validity or operation shall be made in accordance with the laws of the Commonwealth of Australia and the State or Territory in which the **Policy** is issued and in accordance with the English text as it appears in this **Policy**. The parties will submit to the exclusive jurisdiction of the Australian courts, unless specified otherwise.

Tax

Any payment under this **Policy** shall be reduced by the amount of any input tax credit that the relevant **Insured** is entitled to.

Transaction

If a **Transaction** occurs during the **Policy Period**, this **Policy** shall continue to provide cover but only for **Claims** made against the **Insured** for civil liability arising from **Professional Services** performed prior to the effective date of the **Transaction**.

Validity

This **Policy** is not binding upon the **Insurer** unless it is countersigned on the Schedule by an authorised representative of the **Insurer**.

END OF WORDING



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