

Policy Wording



Civil Liability Insurance Policy



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Policy Wording

Civil Liability Insurance Policy

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Privacy Notice

This notice sets out how AIG Australia Limited (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;
- maintain and improve customer service; 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:

- 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;
- assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim;
- 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, United Kingdom, 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.



Policy Wording

Civil Liability Insurance Policy

SECTION 1 – PROFESSIONAL LIABILITY

In consideration of the payment of the **Premium** and subject to all the provisions relating to Section 1 of this policy, the **Insurer** agrees as follows.

1.1 Covers

All cover under Section 1 of this policy is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy.

<i>Civil Liability</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any civil liability of the Insured .
<i>Misleading or Deceptive Conduct</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Misleading or Deceptive Conduct of the Insured .
<i>Intellectual Property</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Infringement .
<i>Defamation</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for libel or slander committed by an Insured .
<i>Lost Documents</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for the destruction, damage to, loss, erasure or mislaying of Documents by an Insured .
<i>Fraud/Dishonesty</i>	The Insurer will pay on behalf of any Insured , who is not the actual perpetrator, all Damages resulting from any Claim for Fraud/Dishonesty of any: (i) Employee ; or (ii) any natural person who is or has been a principal, partner or director of the Policyholder or any Subsidiary .
<i>Defence</i>	The Insurer has the right to defend any Claim which this policy may respond to under its Covers or Extensions. The Insurer shall pay Defence Costs incurred in defending such Claim .

The **Insurer** is under no obligation to pay **Loss**, unless the **Wrongful Act**: (i) first takes place on or after the **Retroactive Date**; and (ii) is committed solely in the performance of or failure to perform **Professional Services**; or (iii) arises from **Technology Products**.

1.2 Standard Extensions

<i>BusinessGuard Advisory Panel</i>	During the Policy Period the Policyholder is entitled to free advice, not involving a significant time commitment on the part of the member firm, 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/Occurrences" Conditions. The Insureds may access the services of the BusinessGuard Advisory Panel by contacting the firms listed as such at www.AIG.com.au .
<i>Court Attendance</i>	For any person described in (i) and (ii) below who actually attends court as a witness in connection with a Claim notified under and covered by this policy, Defence Costs will include the following rates per day on which attendance in court has been required: (i) for any principal, partner, or director Insured \$500 (ii) for any Employee \$250 No Retention shall apply to this Extension.



1.2 Standard Extensions (continued)

Extended Reporting Period

If the **Insurer** cancels or does not renew this policy, other than for non payment of **Premium** or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice of any covered **Claim** first made against the **Insured**. That extended reporting period shall not apply if this policy or its cover has been replaced.

Joint Ventures

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** for any civil liability of the **Insured** 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 of any **Damages** 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**.

Mitigation

The **Insurer** shall reimburse the **Insured** for the costs to rectify and put right the consequences of any **Wrongful Act**, provided that it shall be a condition precedent to **Insurer's** liability under this Extension that:

- (i) the **Insured** shall give written notice to the **Insurer** of the **Wrongful Act** and the costs that is required to mitigate or rectify the consequences of it as soon as practicable and during the **Policy Period**;
- (ii) the **Insured** shall satisfy the **Insurer** that such costs are reasonably necessary to prevent a covered **Claim** for a **Wrongful Act**, during the **Policy Period**;
- (iii) the amount of such costs shall be supported by evidence of expenditure that shall be subject to approval by the **Insurer**;
- (iv) such costs shall not include any element of profit or loss of profit to the **Insured** or **Third Party**; and
- (v) the **Insurer** shall only pay for the amount of any costs which are in excess of the **Retention**.

Network Security Breach

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** arising from the failure of **Computer Security** of **Technology Products**.

Previous Business Name

"**Insured**" is extended to include any entity which previously traded as the **Policyholder** under a different business name.

Property Cover for Lost Documents or Computer Records

With respect to a **Third Party's Documents or Computer Records**:

- (i) for which an **Insured** is legally responsible, and
- (ii) that, during the **Policy Period**, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance or non-performance of **Professional Services**.

Damages shall also include costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents or Computer Records** provided that:

- (a) such loss or damage is sustained while the **Documents or Computer Records** are either:
 - 1) in transit; or
 - 2) in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them;
- (b) where the lost or mislaid **Documents or Computer Records** have been the subject of a diligent search by or on behalf of the **Insured**;
- (c) the amount of any **Claim** for 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
- (d) the **Insurer** shall not be liable for any **Claim** arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Insured's** control.

A separate retention of \$1,000 instead of the **Retention** will apply to each **Claim** covered under this Extension.



1.2 Standard Extensions (continued)

<i>Quasi Judicial Costs</i>	“ Defence Costs ” is extended to include any reasonable fees, costs and expenses incurred by or on behalf of the Insured in the investigation, defence, settlement or appeal of any complaint against the Insured by any statutory or professional body which has jurisdiction to inquire or adjudicate in any such matter.
<i>Technology Products</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any Technology Product Failure .
<i>Vicarious Liability</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for any civil liability of an agent or consultant acting on the Policyholder’s behalf and for whom an Insured is legally liable.
<i>Virus Transmission</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim arising from the transmission of a Computer Virus by the Insured .

1.3 Optional Extensions

<i>Employment Practice Liability</i>	<p>The Insurer will pay on behalf of any Insured all Damages resulting from any liability from a Claim against:</p> <ul style="list-style-type: none">(i) the Policyholder or any Subsidiary; or(ii) any natural person, who is or has been a principal, partner or director of the Policyholder or any Subsidiary; or(iii) any Employee; <p>by an Employee or prospective Employee of the Policyholder or any Subsidiary based upon any civil liability in connection with the recruitment, employment of or the termination of such Employee or, decision not to employ the prospective Employee, including, but not limited to, any employment-related retaliation or harassment.</p>
<i>Fidelity</i>	The Insurer shall pay the Policyholder or any Subsidiary for its Direct Financial Loss due to Dishonest Acts committed after the Continuity Date which are Discovered during the Policy Period and reported to the Insurer as required by this policy.
<i>Patent</i>	The Insurer will pay on behalf of any Insured all Damages resulting from any Claim for an unintentional infringement of a registered Australian patent.

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SECTION 2 – PUBLIC AND PRODUCTS LIABILITY

In consideration of the payment of the **Premium** and subject to all the provisions relating to Section 2 of this policy, the **Insurer** agrees as follows.

2.1 Covers

Public and Technology Products Liability

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from:

- (i) **Bodily Injury**;
- (ii) **Property Damage**;
- (iii) obstruction and interference with traffic, loss of amenities, nuisance, trespass or any like cause;

which takes place during the **Policy Period** arising from an **Occurrence** in connection with the **Business**.

Defence Costs

Except where otherwise stated, the **Insurer** will pay **Defence Costs** in addition to the **Limit of Liability**.

In respect of Section 2 only “**Defence Costs**” is extended to include:

- (i) costs of legal representation at:
 - (a) any coroner’s inquest or inquiry in respect of any death;
 - (b) proceedings in any court arising out of any alleged breach of statutory duty which is covered under Section 2 of the policy; and
- (ii) all other costs and expenses which may form the subject of a claim for indemnity under this policy;

arising from an **Occurrence** which takes place during the **Policy Period** in connection with the **Business**.

2.2 Standard Extensions

Contingent Motor

The **Insurer** will pay on behalf of the **Insured** all **Damages** which the **Insured** shall become legally liable to pay for **Bodily Injury** or **Property Damage** arising out of the use of any **Motor Vehicle**:

- (i) not owned or leased by the **Insured** but being used in connection with the **Business**;
- (ii) owned or leased by the **Insured** and being used in unauthorised circumstances; and/or
- (iii) by or on behalf of any person to whom the **Motor Vehicle** is lent, leased or hired in connection with the **Business** where such person has failed to arrange insurance cover, other than:
 - (a) damages to the **Motor Vehicle** owned or leased by the **Insured**; and/or
 - (b) whilst the **Motor Vehicle** is being used outside Australia.

Legionella

Notwithstanding the Pollution Exclusion, the **Insurer** will pay on behalf of the **Insured** all **Damages** which the **Insured** shall become legally liable to pay for **Bodily Injury** caused by the discharge, dispersal, release or escape of legionella bacteria from any premises owned by the **Insured** other than:

- (i) liability assumed under contract unless such liability would have attached in the absence of such contract; or
- (ii) where the **Insured** has failed to take reasonable precautions to comply with the relevant Health and Safety Regulations.

SECTION 3 – DEFINITIONS

The following words in **bold** typeface have a special meaning as follows:

“Aircraft”	means a vehicle designed to be used primarily in the air and to be supported by the dynamic reaction of the air upon the vehicle’s wings or rotor-blades, and/or by the vehicle’s buoyancy in the air.
“Aircraft Products”	means: <ul style="list-style-type: none"> (i) Aircraft and any ground support or control equipment used therewith; (ii) any Technology Product furnished by the Insured and installed in Aircraft or used in connection with Aircraft; (iii) any tooling used for the manufacture of (i) or (ii) above; (iv) any ground handling tools and equipment used in connection with (i) or (ii) above including training aids, navigational aids, instruction or manuals; (v) blueprints, engineering or other data furnished by the Insured in connection with (i), (ii), (iii) or (iv) above; (vi) any advice, service and/or labour furnished by the Insured in connection with (i), (ii), (iii), (iv) or (v) above.
“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.
“Business”	means all the usual activities and operations of the Policyholder described in the proposal form and accompanying documentation and includes: <ul style="list-style-type: none"> (i) the ownership, tenancy or occupation of premises of the Policyholder; (ii) private work carried out with the consent of the Policyholder for any director, partner or senior Employee of the Policyholder by an Employee or independent contractor under the direction and direct supervision of the Policyholder or any Subsidiary; (iii) participation in exhibitions or conferences in relation to the Policyholder’s business; and (iv) the provision of emergency services or security services in respect of the Policyholder’s business. (v) the provision of Technology Products.
“Claim”	means any: <ul style="list-style-type: none"> (i) written demand; or (ii) civil or administrative proceedings; that seeks Damages as a result of Wrongful Acts .
“Computer Records”	means any Data stored within any: <ul style="list-style-type: none"> (i) computer, data processing equipment, or any of their respective components; or (ii) computer software.
“Computer Security”	means hardware, software or firmware whose function or purpose is to prevent a computer attack, unauthorised access, unauthorised use, disclosure of confidential or private information, or the transmission of malicious code.
“Computer Virus”	means any malicious program or code that causes loss or damage to any Technology Products and/or prevents or impairs any computer system from performing and/or functioning accurately and properly.
“Continuity Date”	means the date specified as such in the Schedule.
“Damages”	means any amount that an Insured shall be legally liable to pay to a Third Party in respect of judgments rendered against an Insured , or for settlements which conform with the consent requirements set out in the “Claims/Occurrences Conditions”, subject to the limitations of the “Loss” .
“Data”	means electronically stored, digital or digitised information or media.

3. Definitions (continued)

“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.
“Direct Financial Loss”	means direct financial loss caused by the loss of Money or Securities owned by the Policyholder or any Subsidiary. “Direct Financial Loss” does not include: (i) wages, salaries or other remuneration or benefits paid by the Policyholder or any Subsidiary to its Employees, partners, principals or directors; (ii) complete or partial non-payment or default under any credit arrangement; or (iii) any costs, fees or other expenses incurred by the Insured in prosecuting or defending any demand, claim or legal proceeding resulting from a Direct Financial Loss which is covered under this policy.
“Discovered” or “Discovers” or Discovery”	means when any of the Policyholder’s, or a Subsidiary’s partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with an Employee who has or is attempting to commit a Dishonest Act) first becomes aware of any facts which would cause a reasonable person to assume that a Direct Financial Loss which may be covered under this policy has been or is likely to be incurred, even though the exact amount or details of the Direct Financial Loss are not known at the time the person first became aware of such facts. The first Discovery constitutes Discovery by each and every Insured.
“Dishonest Acts”	means any fraudulent or dishonest acts committed by an Employee (acting alone or in collusion with others) with the principal intent to cause the Policyholder or any Subsidiary to sustain a Direct Financial Loss and results in the Employee making an improper financial gain for themselves or for any other individual or entity intended by the Employee to receive such gain.
“Documents”	means all documents of any nature whatsoever including Computer Records and Data; but does not include any currency, negotiable instruments or records thereof.
“Employee”	means any natural person who is or has been expressly engaged as an employee under a contract of employment with the Policyholder or any Subsidiary. “Employee” shall not mean any: (i) principal, partner or director; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.
“Fraud/Dishonesty”	means fraudulent or dishonest conduct: <ul style="list-style-type: none"> (i) not condoned, expressly or implicitly, by; and (ii) that results in liability to; the Policyholder or any Subsidiary.
“Infringement”	means an infringement of any intellectual property right of any Third Party, other than patents and Trade Secrets.
“Insured”	means: <ul style="list-style-type: none"> (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 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 the entity specified as such in the Schedule.
“Limit of Liability”	means the amount specified as such in the Schedule.

3. Definitions (continued)

“Loss”	means Damages and Defence Costs . “Loss” shall not mean and this policy shall not cover any: <ul style="list-style-type: none"> (i) taxes payable by the Insured; (ii) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (iii) restitutionary relief; (iv) fines or penalties; (v) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (vi) employment related compensation or benefits, overhead, charges or expenses of any Insured; (vii) the costs and expenses associated with any withdrawal, recall, removal or disposal of any product or software because of a known or suspected defect, deficiency or inadequacy; or (viii) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a Claim is brought or the Occurrence occurs.
“Misleading or Deceptive Conduct”	means any actual or alleged misleading or deceptive conduct at law or under the Corporations Act 2001 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Trade Practices Act 1974 (Cth) or any similar provisions in the States’ Fair Trading Acts.
“Money”	means local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.
“Motor Vehicle”	means any type of machine on wheels or on caterpillar tracks made or intended to be propelled by means other than manual or animal power.
“Occurrence”	means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Bodily Injury or Property Damage neither expected nor intended from the Insured’s standpoint.
“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.
“Professional Services”	means Technology Services .
“Property Damage”	means damage to or loss of or destruction of tangible property or loss of use thereof.
“Public Key Infrastructure”	means the policies, methods, equipment and procedures including associated software, hardware and firmware for establishing and managing a secure method for exchanging electronic information involving the use of certification certificates, digital certificates, digital signatures, public and/or private keys.
“Retention”	means the amount specified as such in the Schedule.
“Retroactive Date”	means the date specified as such in the Schedule.
“Securities”	means any negotiable or non-negotiable instruments or contracts representing Money or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

3. Definitions (continued)

“Subsidiary”	<p>means companies in which the Policyholder either directly, or indirectly through one or more of its Subsidiaries;</p> <ul style="list-style-type: none"> (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. <p>For any Subsidiary or any Insured thereof, cover under this policy shall only apply to Wrongful Acts committed while such company is a Subsidiary of the Policyholder.</p>
“Technology Services”	<p>means any:</p> <ul style="list-style-type: none"> (i) software services; (ii) Data services; or (iii) services that facilitate access to or the use of Data or software via the internet; <p>of the Policyholder or any Subsidiary.</p>
“Technology Product”	<p>means any computer hardware or firmware:</p> <ul style="list-style-type: none"> (i) sold, leased or otherwise supplied; (ii) licensed; or (iii) installed, modified or serviced; <p>by any Insured.</p>
“Technology Product Failure”	<p>means any actual or alleged breach of duty, act, error, misstatements, or misleading statements or omission in connection with any Technology Product.</p>
“Third Party”	<p>means any entity or natural person; provided, however, Third Party does not mean:</p> <ul style="list-style-type: none"> (i) any Insured; (ii) any other entity or natural person having a financial interest or executive role in the operation of the Policyholder or any Subsidiary. <p>However, for the purposes of the “Employment Practice Liability” Optional Extension only, Third Party means “an Employee or prospective Employee of the Policyholder or any Subsidiary.”</p>
“Trade Secret”	<p>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 who can obtain economic advantage from its disclosure or use.</p>
“Wrongful Act”	<p>means (a) any breach of duty, act, error, misstatement, breach of confidentiality or omission; (b) any Misleading or Deceptive Conduct of the Insured; (c) any Infringement; (d) libel or slander committed by an Insured; (e) any destruction, damage to, loss, erasure or mislaying of Documents by an Insured; (f) Fraud/Dishonesty; or (g) Technology Product Failure.</p>

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SECTION 4 – EXCLUSIONS

4.1 Exclusions Applicable to Section 1 Only

The **Insurer** will not be liable to make any payment under Section 1 of this policy for **Loss** in connection with any **Claim**:

Bodily Injury/Property Damage

arising out of, based upon or attributable to **Bodily Injury** or **Property Damage** unless arising from:

- (i) an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**; or
- (ii) an allegation of emotional distress under the “Employment Practice Liability” Optional Extension or the “Defamation” Cover.

Infrastructure

arising out of, based upon or attributable to:

- (i) mechanical failure;
- (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (iii) telecommunications or satellite systems failure

unless such failure arises solely in the performance or failure to perform **Professional Services**.

Prior Claims/Circumstances

- (i) made prior to or pending at the inception of this policy; or
- (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any **Insured** to give rise to a **Claim**.

Public Key Infrastructure

arising out of, based upon or attributable to where the **Insured** acted in the actual or effective capacity of a certificate authority, certificate repository, validation authority or registration authority; or arising out of the theft of any **Public Key Infrastructure**.

For the “Fidelity” Optional Extension only, this policy shall not cover:

Confidential Information

Direct Financial Loss arising out of, based upon, attributable to or in any way connected with the accessing and dissemination of, any confidential information including, but not limited to, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.

Consequential Loss

any indirect or consequential loss of any nature, including but not limited to any loss of income such as interest and dividends not realised by the **Policyholder** or any **Subsidiary** or any other person or organisation, resulting from a **Direct Financial Loss** which is covered under this policy.

Director/Principal/Partner Dishonesty

Direct Financial Loss arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest activities involving collusion or complicity of a partner, principal or director of the **Policyholder** or any **Subsidiary**.

Dual Controls

Direct Financial Loss or make any payment in connection with any **Dishonest Acts** arising out of, based upon or attributable to the **Insured’s** failing to ensure that at least one principal, partner or director and one authorised signatory sign any cheques or funds transfer instructions.

Extortion or Kidnap & Ransom

Direct Financial Loss arising out of, based upon, attributable to or in any way with connected with any extortion or kidnap and ransom.

Geographical Limits

Direct Financial Loss arising out of, based upon, attributable to or in any way connected with any **Dishonest Acts** outside of Australia or New Zealand.

Loss Establishment Costs

fees, costs or other expenses incurred by the **Insured** in establishing the existence or amount of any **Direct Financial Loss** covered under this policy.

Loss Sustained After Knowledge

Direct Financial Loss arising out of, based upon, attributable to or in any way connected with any **Employee** from the time the **Policyholder’s**, or a **Subsidiary’s** partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with such **Employee** for the purpose of committing a **Dishonest Act**) had actual knowledge that the **Employee** had committed or was suspected of having committed a **Dishonest Act**.



4.1 Exclusions Applicable to Section 1 Only (continued)

Profit & Loss or Inventory Computation

Direct Financial Loss the proof of which is dependent solely upon:

- (i) a profit and loss computation; or
- (ii) a comparison of inventory records with an actual physical count.

If, however, an **Employee** is identified as having caused or is suspected of having caused a **Direct Financial Loss**, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the **Direct Financial Loss** as required by the "Notification of Claims/Occurrences" Condition.

4.2 Exclusions Applicable to Section 2 Only

The **Insurer** will not be liable to make any payment under Section 2 of this policy for **Loss** in connection with any **Occurrence**:

Aircraft / Watercraft

arising out of, based upon or attributable to ownership, possession or use by the **Insured** of any aircraft, aerial device for travel through air or space, water-going vessel or craft, hovercraft or hydrofoil.

Aircraft Products

arising out of, based upon or attributable to the supply, distribution, sale or manufacture of **Aircraft Products** or reliance upon any representations or warranties made by the **Insured** with respect to **Aircraft Products**.

Financial Loss

for financial loss, unless such loss is as a direct result of **Bodily Injury** or **Property Damage** for which cover is provided under Section 2 of this policy.

Motor Liability

arising out of, based upon or attributable to the ownership, possession or use under the control of the **Insured** of any **Motor Vehicle**. However, this Exclusion shall not apply to liability:

- (i) arising beyond the limits of any carriageway or thoroughfare by the loading or unloading of any **Motor Vehicle**;
- (ii) caused by any self propelled, mechanical, plant and/or machinery, or apparatus attached thereto whilst working as a tool of trade;
- (iii) arising out of any **Motor Vehicle** temporarily in the custody of the **Insured** for the purposes of parking;
- (iv) for damage to any bridge, weighbridge, road or anything beneath caused by the weight of any **Motor Vehicle** or of the load carried thereon;

where such liability does not require compulsory insurance by legislation governing the use of any **Motor Vehicle**.

Professional Liability

arising out of, based upon or attributable to professional advice, design, service or specification other than:

- (i) **Damages** for **Bodily Injury** or **Property Damage**; and
- (ii) the failure by an **Employee** employed to provide medical advice, first aid or other medical assistance on the **Insured's** premises.

Property Damage

arising out of, based upon or attributable to **Property Damage** in respect of property belonging to the **Insured** or in the **Insured's** care, custody or control other than:

- (i) **Employees** and/or guests and/or visitors' property (including **Motor Vehicles** and contents);
- (ii) premises and their contents not owned or rented by the **Insured** but which are temporarily occupied by the **Insured** in connection with the **Business**;
- (iii) waste, skips, containers and the like being loaded and unloaded in connection with the **Business**; and
- (iv) premises (including contents, fixtures and fittings) leased, hired or rented to the **Insured** in the course of the **Business**.

4.2 Exclusions Applicable to Section 2 Only

<i>Workers Compensation and Employers Liability</i>	<p>arising out of, based upon or attributable to:</p> <ul style="list-style-type: none"> (i) Personal Injury sustained by an Employee which arises out of or in the course of their employment by the Insured; (ii) Claims arising from a provision imposed by: <ul style="list-style-type: none"> (a) accident compensation legislation or any similar legislation; (b) any industrial award, agreement or determination; (iii) any obligation for which the Insured may be held liable under any Worker's Compensation legislation.
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4.3 Exclusions Applicable to Sections 1 and 2

The **Insurer** will not be liable to make any payment under Section 1 or 2 of the policy for **Loss** in connection with any **Claim** or **Occurrence**:

<i>Anti-Competitive Conduct</i>	arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition.
<i>Asbestos</i>	arising out of, based upon or attributable to or related in any way to asbestos or materials containing asbestos.
<i>Contractual Liability / Performance Guarantees</i>	<p>arising out of, based upon or attributable to any:</p> <ul style="list-style-type: none"> (i) liability assumed or accepted by an Insured under any contract or agreement, other than with an Employee in the case of the "Employment Practice Liability" Optional Extension, or except to the extent that such liability would have attached to the Insured in the absence of such contract or agreement; or (ii) guarantee or warranty; or (iii) delay in the supply, installation, modification or service of any Technology Products.
<i>Costs Assessment</i>	arising out of, based upon or attributable to any failure by any Insured or other party acting for the Insured to make an accurate pre-assessment of the cost of Technology Products or performing Professional Services .
<i>Damage and Defect of Technology Products</i>	<p>arising out of, based upon or attributable to:</p> <ul style="list-style-type: none"> (i) loss or damage to the known or suspected defective part of any Technology Product; (ii) the cost of recalling, replacing, repairing or removing the Technology Products as a result of any known or suspected defect or deficiency therein; and (iii) the cost of rectifying defective work to Technology Products.
<i>Insolvency</i>	arising out of, based upon or attributable to the insolvency, administration or receivership of the Insured .
<i>Intentional Acts</i>	arising out of, based upon or attributable to any intentional Wrongful Act by an Insured .
<i>Misdeeds</i>	arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an Insured admits, to be a criminal, dishonest or fraudulent act; and in such event, the Insurer shall be reimbursed for all Loss paid in connection with such Claim or Occurrence ; provided, however, that this exclusion shall not apply to the " Fraud/Dishonesty " Cover or the "Fidelity" Optional Extension.
<i>Nuclear and Radioactive Contamination</i>	<p>arising out of, based upon or attributable to:</p> <ul style="list-style-type: none"> (i) any ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or (ii) the radioactive, toxic, explosive or hazardous properties of any nuclear assembly or nuclear component thereof.



4.3 Exclusions Applicable to Sections 1 and 2 (continued)

<i>Patent / Trade Secrets</i>	arising out of, based upon or attributable to the breach of licenses concerning infringement of or misappropriation of patents or Trade Secrets ; provided, however, that this Exclusion shall not apply to the "Patent" Optional Extension.
<i>Pollution</i>	arising out of, based upon or attributable to: <ul style="list-style-type: none">(i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of Pollutants; or(ii) any direction, request or effort to:<ul style="list-style-type: none">(a) test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise Pollutants; or(b) respond to or assess the effects of Pollutants.
<i>Trade Debts</i>	arising out of, based upon or attributable to any: <ul style="list-style-type: none">(i) trading debt incurred by an Insured; or(ii) guarantee given by an Insured for a debt.
<i>USA / Canada</i>	arising out of, based upon or attributable to any Professional Services or Business conducted in the United States of America, Canada or any of their territories or possessions.
<i>War / Terrorism</i>	arising out of, 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.

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SECTION 5 - CONDITIONS

5.1 Claims/Occurrences

Notification of Claims/Occurrences

The **Insured** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of any **Occurrence** or **Claim** first made against the **Insured** or **Direct Financial Loss** as soon as practicable and during the **Policy Period**. All notifications must be in writing or by facsimile, and addressed as required in the "Claims/Occurrence Notice" Item on the Schedule.

If the **Insured** notifies a **Direct Financial Loss** to the **Insurer**, the **Insured** must also, as soon as practicable, provide the **Insurer** with:

- (i) affirmative proof of the **Direct Financial Loss**; and
- (ii) all requested information and documents and co-operation in all matters pertaining to the **Direct Financial Loss**.

Related Claims

If notice of a **Claim** against an **Insured** is given to the **Insurer** pursuant to the terms and conditions of this policy, then:

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

Any **Claim** or **Claims** arising out of, based upon or attributable to:

- (i) the same cause; or
- (ii) a single **Wrongful Act**; or
- (iii) a series of continuous, repeated or related **Wrongful Acts**;

shall be considered a single **Claim** for the purposes of this policy.

Related Dishonest Acts

Any **Direct Financial Loss** resulting from a series of continuous, repeated or related **Dishonest Acts** shall be considered a single **Direct Financial Loss**.

Related Occurrences

All events of a series consequent on or attributable to one source or original cause shall be deemed one **Occurrence**.

Continuity

In the absence of fraudulent non-disclosure, where a **Claim** that would otherwise be covered by this policy is excluded by the "Prior Claims/Circumstances" Exclusion part (ii), then cover is provided under this policy for that **Claim**, provided always that:

- (i) the **Insured** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**; and
- (ii) the cover shall be in accordance with the provisions of the policy in force when the **Insured** first became so aware.

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.



5.1 Claims/Occurrences (continued)

<i>Insurer's Consent</i>	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 as Loss 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.
<i>Direct Financial Loss Mitigation</i>	As soon as the Insured Discovers a Direct Financial Loss involving an identified Employee , the Insured must immediately take all necessary steps to prevent any additional Direct Financial Loss being caused by the same identified Employee . Any further Direct Financial Loss caused by the same Employee after the date of Discovery will not be covered by this policy.
<i>Insured's Consent</i>	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 for all Loss on account of such Claim or Occurrence shall not exceed the amount for which the Insurer could have settled such Claim or Occurrence , 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 .
<i>Cooperation</i>	The Insured will at their own cost: <ul style="list-style-type: none">(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 Loss under this policy;(iii) give such information and assistance to the Insurer as the Insurer may reasonably require to enable it to investigate any Loss or determine the Insurer's liability under this policy.
<i>Fraudulent Claims</i>	If any Insured shall give notice or claim cover for any Loss under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such Loss shall be excluded from cover under the policy, and the Insurer shall have the rights to cancel the policy, as allowed by the <i>Insurance Contracts Act 1984</i> (Cth).
<i>Fraud/Dishonesty of Principals, Partners and Directors</i>	In the case of any Claim for Fraud/Dishonesty of any principal, partner or director of the Policyholder or any Subsidiary , the "Fraud/Dishonesty" Cover only applies in circumstances where: <ul style="list-style-type: none">(i) at least one principal, partner or director and one authorised signatory signed any cheques or funds transfer instructions; and(ii) the Policyholder's bank accounts were not reconciled by any person who had the authority to operate those bank accounts.
<i>Allocation</i>	Where any Loss is incurred in respect of any Claim or Occurrence 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 Loss 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. Where the Insurer's liability under this policy is limited under this clause, the Insured and the Insurer must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.

5.1 Claims/Occurrences (continued)

Allocation Disputes

If the parties are unable to agree, then the fair and equitable allocation is to be determined by a Senior Lawyer (to be mutually agreed upon by the **Policyholder** and the **Insurer**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the **Loss** was incurred).

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 judgement 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 proportion of **Defence Costs** to be paid under the policy remains unagreed and undetermined, the **Insurer** shall pay the proportion of the **Defence Costs** which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **Defence Costs** incurred prior to agreement or determination.

5.2 Purchase and Administration

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**.

5.3 Limit and Retention

Limit of Liability

The total amount payable by the **Insurer** for a single **Claim** or **Occurrence** (as specified in the "Related Claims" and/or "Related Occurrences" Conditions), shall not exceed the **Limit of Liability (Any one Claim or Any one Occurrence)**.

The total amount payable by the **Insurer** under this policy for all **Claims** or **Occurrences** shall not exceed the **Limit of Liability (Aggregate)**. Sublimits of Liability and Extensions are part of that amount and are not payable in addition to the **Limit of Liability (Aggregate)**. The **Limit of Liability (Any one Claim)** and the **Limit of Liability (Aggregate)** for the period provided in the "Extended Reporting Period" Extension are part of, and not in addition to, the **Limit of Liability (Any one Claim)** and the **Limit of Liability (Aggregate)** 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.

Defence Costs

Defence Costs are payable in addition to the **Limit of Liability (Any one Claim or Any one Occurrence)**. In the event that the total **Damages** resulting from a single **Claim** or **Occurrence** exceeds the **Limit of Liability (Any one Claim or Any one Occurrence)**, then **Defence Costs** will only be payable under this policy up to the proportion which the **Limit of Liability (Any one Claim or Any one Occurrence)** bears to the total amount paid to dispose of such **Claim** or **Damages** arising from an **Occurrence**. Under no circumstances, however, shall the **Insurer** be liable to pay **Loss** in excess of twice the **Limit of Liability (Any one Claim or Any one Occurrence)** for any single **Claim** or **Occurrence**.

Retention

The **Insurer** shall only pay for the amount of any **Loss** or **Direct Financial Loss** which is in excess of the **Retention**.

In respect of Section 1 only no **Retention** applies to **Defence Costs** if the **Retention** is \$20,000 or less. The **Retention** is to be borne by the **Insured** and shall remain uninsured.



5.4 General Provisions

<i>Assignment</i>	This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the Insurer .
<i>Cancellation</i> <i>By Policyholder:</i>	This policy may be cancelled by the Policyholder at any time only by written prior notice of at least 14 days to the Insurer . In such case, if no Claim or Occurrence has been made and no circumstance has been notified prior to such cancellation; the Insurer shall retain the pro-rata proportion of the Premium . Otherwise, Premium shall not be returnable and shall be deemed fully earned at cancellation.
<i>By Insurer:</i>	This policy may be cancelled by the Insurer only as prescribed by the <i>Insurance Contracts Act 1984</i> (Cth). In such case, the Insurer shall be entitled to a pro-rata proportion of the Premium . Payment or tender of any unearned Premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
<i>Insolvency</i>	Insolvency, receivership, bankruptcy of any Insured shall not relieve the Insurer of any of its obligations hereunder.
<i>Plurals, Headings and Titles</i>	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.
<i>Scope and Governing Law</i>	Where legally permissible and subject to the "U.S.A./Canada" Exclusion, this policy shall apply to any Claim made against any Insured or any Occurrence 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 Australia and in accordance with the English text as it appears in this policy.
<i>Subrogation</i>	If any payment is to be made under this policy in respect of a Claim or Occurrence , 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 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. The Insurer agrees not to exercise any such rights of recovery against any Employee unless the Claim or Occurrence is brought about or contributed to by serious or willful misconduct of the Employee in the course of or arising out of the employment. In its sole discretion, the Insurer may, in writing, waive any of its rights set forth in this Subrogation Clause.
<i>Validity</i>	This policy is not binding upon the Insurer unless it is countersigned on the Schedule by an authorised representative of the Insurer or its general agent.

<End>

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