

NEWLINE AUSTRALIA

INSURANCE PTY LTD

PROFESSIONAL INDEMNITY

INSURANCE AT LLOYD'S

Newline Australia

This is to certify that in accordance with the authorisation granted under Agreement Number *Connect2010* to the undersigned by certain Underwriters at Lloyd's, whose names and proportions underwritten by them can be ascertained by reference to the attached Schedule, and in consideration of the premium specified herein, the said Underwriters are hereby bound, each for their own part and not for one another, their heirs, executors and administrators, to insure as attached:

SIGNED for and on behalf of certain Underwriters at Lloyd's

BY

AT

ON this day of

The subscribing underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing underwriters are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

All enquiries and disputes regarding this Insurance should be addressed to Newline Australia Insurance Pty Ltd, ABN 81 118 089 651, Level 31, 570 Bourke Street, Melbourne, 3000

Schedule

Policy Number:

Named Insured:

**Address of
Named Insured:**

Professional Services:

Period of Insurance: From 4.00pm on [insert date] to 4.00pm on [insert date]
Local Standard Time at the address of the Named Insured

Limit of Liability: \$[insert limit]

**Aggregate Limit of
Liability:** \$[insert limit]

Excess: \$[insert amount]

Retroactive Date: [insert date]

Premium: \$[insert amount]

Stamp Duty: \$[insert amount]

GST: \$[insert amount]

Total: \$[insert amount]

Underwriters: Lloyd's (Syndicate 1218 ODY)

Proportion: 100%

**Additional
Insurance:**

Automatic Policy Extensions:	Clause	Clause Name	Coverage Status
	2.2.1	Compensation for Court Attendance	Covered
	2.2.2	Extended Reporting Period	Covered
	2.2.3	Previous Business Name	Covered
	2.2.4	Quasi Judicial Costs	Covered
	2.2.5	Loss of Documents	Covered
	2.2.6	Newly Acquired or Created Subsidiary or Business	Covered
	2.2.7	Continuous Cover	Covered
Optional Policy Extension:	Clause	Clause Name	Coverage Status
	2.3.1	Joint Venture Liability	Not Covered

PROFESSIONAL INDEMNITY INSURANCE

IMPORTANT NOTICE TO THE INSURED

Please read this **Policy** carefully to ensure that it is in accordance with your requirements and that you understand all its terms, conditions, limitations, exclusions and any endorsements. **Underwriters** should be contacted immediately if any correction is necessary. This **Policy** is written on a claims made and notified basis, which means that it will only respond to **Claims** first made against you during the **Period of Insurance** and notified to **Underwriters** during the **Period of Insurance** or the Extended Reporting Period.

Underwriters referred to in the **Schedule** have received a written proposal form which, together with all its attachments and all underwriting information submitted, is incorporated into and forms the basis of this **Policy**. Words and phrases that appear in **bold** print have a special meaning, as detailed in Section 8 of this **Policy** or as stated in the **Schedule**.

In consideration of the payment of the **Premium** and subject to all the terms, conditions, limitations, exclusions and any endorsements of this **Policy**, **Underwriters** agree as follows:

1. INSURING CLAUSE

1.1. PREAMBLE

Indemnity is provided in respect of the following in accordance with and subject to all the terms, conditions, limitations, exclusions and any endorsements of this **Policy**, and provided always that:

- 1.1.1. the **Claim** is first made against the **Insured** during the **Period of Insurance** and reported to **Underwriters** during the **Period of Insurance**;
- 1.1.2. the events giving rise to the **Claim** occur within the **Territorial Limits**;
- 1.1.3. any action for damages is brought in a Court or Tribunal within the **Territorial Limits**; and
- 1.1.4. any settlement is obtained, or any judgment or order is enforced, within the **Territorial Limits** or determined pursuant to the laws of those countries or their territories or protectorates within the **Territorial Limits**.

1.2. AUTOMATIC COVER

1.2.1. CIVIL LIABILITY

Underwriters will indemnify the **Insured** against civil liability for **Loss** arising from breach of professional duty in the provision of the **Professional Services**.

1.2.2. INTELLECTUAL PROPERTY

Underwriters will indemnify the **Insured** against civil liability for **Loss** arising from infringement of **Intellectual Property** rights, provided always that the act, error or omission by the **Insured** giving rise to the liability is unintentional and is committed in the provision of the **Professional Services**.

1.2.3. MISLEADING AND DECEPTIVE CONDUCT

Underwriters will indemnify the **Insured** against civil liability for **Loss** arising from 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 provided always that such conduct by the **Insured** is unintentional and is committed in the provision of the **Professional Services**.

1.2.4. LIBEL AND SLANDER

Underwriters will indemnify the **Insured** against civil liability for **Loss** in respect of any actual or alleged libel and slander by reason of words written or spoken, provided always that such libel or slander by the **Insured** is unintentional and is committed in the provision of the **Professional Services**.

1.2.5. FRAUD AND DISHONESTY

Notwithstanding Exclusion 4.14, **Underwriters** will indemnify an **Insured** against civil liability for **Loss** in respect of a **Claim** made against that **Insured** arising as a result of another **Insured's** actual or alleged dishonest, fraudulent, criminal or malicious conduct in the provision of the **Professional Services**, provided always that the **Insured** seeking indemnity has not committed or condoned that dishonest, fraudulent, criminal or malicious conduct.

Clause 1.2.5 does not provide any cover for any liability for any loss or misappropriation of **Currency**.

1.2.6. DEFENCE COSTS

- 1.2.6.1. **Underwriters** will indemnify the **Insured** against **Defence Costs** incurred with **Underwriters'** prior written consent in the defence or settlement of any **Claim** indemnified by this **Policy**.
- 1.2.6.2. **Defence Costs** incurred with the prior written consent of **Underwriters** are payable by **Underwriters** as part of and not in addition to the **Limit of Liability**.

2. POLICY EXTENSIONS**2.1. PREAMBLE**

Underwriters will provide indemnity as is available under each **Automatic Policy Extension** and, if agreed by **Underwriters**, the **Optional Policy Extension** below, provided always that:

- 2.1.1. the **Claim** is first made against the **Insured** during the **Period of Insurance** and reported to **Underwriters** during the **Period of Insurance**;
- 2.1.2. the events giving rise to the **Claim** occur within the **Territorial Limits**;
- 2.1.3. any action for damages is brought in a Court or Tribunal within the **Territorial Limits**;
- 2.1.4. any settlement, or the enforcement of any judgment or order, is obtained within the **Territorial Limits** or determined pursuant to the laws or those countries or their territories or protectorates within the **Territorial Limits**;
- 2.1.5. the indemnity provided by each **Automatic Policy Extension** and the **Optional Policy Extension** is subject to all the terms, conditions, limitations, exclusions and any endorsements of this **Policy**;
- 2.1.6. the **Limit of Liability** is not increased by the inclusion of any **Automatic Policy Extension** and the **Optional Policy Extension**; and
- 2.1.7. where not specified or denoted as "Covered" in the **Schedule**, no cover is afforded under this **Policy** in relation to the coverage specified under the **Optional Policy Extension**.

2.2. AUTOMATIC POLICY EXTENSIONS**2.2.1. COMPENSATION FOR COURT ATTENDANCE**

Underwriters agree to pay the **Insured** the sums detailed below in the event that the **Insured(s)** detailed below attend(s) Court as a witness in connection with a covered claim under this **Policy**:

- 2.2.1.1. for any partner, director or principal: \$500 per day; and
- 2.2.1.2. for any **Employee**: \$250 per day.

Indemnity under this **Automatic Policy Extension** is sub-limited to \$25,000 any **One Claim** and in the aggregate for the **Period of Insurance**.

2.2.2. EXTENDED REPORTING PERIOD

Should **Underwriters** cancel or not renew this **Policy**, other than for non-payment of premium or any other breach of the terms and conditions of this **Policy** by the **Insured**, and the **Policy** or its cover is not replaced, the **Insured** shall have the right to a period of 30 days following the effective date of cancellation or non-renewal in which to give notice of any **Claim** first made against the **Insured** during the **Period of Insurance**.

2.2.3. PREVIOUS BUSINESS NAME

The definition of **Insured** is extended to include any entity which previously traded as the **Named Insured** under a different business name, provided always that the identity and activities of such an entity have been declared to **Underwriters** and agreed by **Underwriters** in writing.

2.2.4. QUASI JUDICIAL COSTS

Underwriters agree to indemnify the **Insured** for any legal costs and expenses, incurred by or on behalf of the **Insured** with **Underwriters'** prior written consent, at any inquiry, including:

- 2.2.4.1. a coronial inquiry;
- 2.2.4.2. any inquiry under the disciplinary rules of a professional body to which the **Insured** is a member; or
- 2.2.4.3. a Royal Commission;

which relates to or is connected with the provision of the **Professional Services** and which the **Insured** is legally compelled to attend, provided always that:

- 2.2.4.4. the inquiry is first ordered or commissioned during the **Period of Insurance**;
- 2.2.4.5. the **Insured** notified **Underwriters** in writing within the **Period of Insurance** and within 28 days of having received notice of the inquiry; and
- 2.2.4.6. **Underwriters** shall be entitled to nominate lawyers to represent the **Insured** at the said inquiry.

Indemnity under this **Automatic Policy Extension** is sub-limited to \$100,000 in the aggregate for the **Period of Insurance**.

2.2.5. LOSS OF DOCUMENTS

Notwithstanding Exclusion 4.2, **Underwriters** agree to indemnify the **Insured** for **Loss of Documents**, when the discovery of such **Loss of Documents** occurred during the **Period of Insurance** and was notified to **Underwriters** during the **Period of Insurance** and provided always that:

- 2.2.5.1. the amount of any claim shall be limited to the cost of replacing and/or restoring the said **Documents** and shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by **Underwriters** with the **Insured's** approval;

2.2.5.2. no liability shall attach hereto for any **Loss of Documents** brought about by wear, tear, vermin, mould or mildew or any other gradually operating cause; and

2.2.5.3. the **Insured** shall subrogate to **Underwriters** any right of recovery in accordance with clause 5.8.

Indemnity under this **Automatic Policy Extension** is sub-limited to \$250,000 any **One Claim** and in the aggregate for the **Period of Insurance**.

2.2.6. NEWLY ACQUIRED OR CREATED SUBSIDIARY OR BUSINESS

The definition of **Insured** is extended to include any subsidiary created by the **Insured** or any business acquired by the **Insured** during the **Period of Insurance** for a period of up to 30 days from the date of such creation/acquisition, provided always that:

2.2.6.1. the business activities of the newly created subsidiary or acquired business are the same as the **Professional Services**;

2.2.6.2. no cover is provided beyond the **Period of Insurance**; and

2.2.6.3. unless otherwise specifically agreed in writing by **Underwriters**, such cover as is provided by this **Automatic Policy Extension** will only apply to **Claims** arising from negligent acts, negligent errors or negligent omissions occurring subsequent to the date of creation of such subsidiary or acquisition of that business.

2.2.7. CONTINUOUS COVER

Where the **Insured**:

2.2.7.1. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and

2.2.7.2. had not notified **Underwriters** of such facts or circumstances prior to the **Period of Insurance**;

then Exclusion 4.5 will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such or circumstances, provided always that:

2.2.7.3. there is an absence of fraudulent non-compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances;

2.2.7.4. the **Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to **Underwriters**, under a professional indemnity policy issued by **Underwriters** and was insured by **Underwriters** at the time when the **Insured** first became aware of such facts or circumstances; and

2.2.7.5. **Underwriters** may reduce their liability under this **Policy** to the extent of any prejudice **Underwriters** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**.

2.3. OPTIONAL POLICY EXTENSION

2.3.1. JOINT VENTURE LIABILITY

2.3.1.1. Notwithstanding Exclusion 4.20, **Underwriters** will indemnify the **Insured** against civil liability for **Loss** arising from any negligent act, negligent error or negligent omission by the **Insured** in the provision of the **Professional Services** as a **Joint Venture** partner, provided always that:

2.3.1.1.1. **Underwriters** have provided their prior written agreement to indemnify the **Insured** in relation to the **Joint Venture**; and

2.3.1.1.2. in the event of a failure to determine responsibility for the negligent act, negligent error or negligent omission of the parties to the **Joint Venture**, **Underwriters'** liability shall be limited to:

2.3.1.1.2.1. the **Insured's** percentage interest in the **Joint Venture**; and

2.3.1.1.2.2. the **Limit of Liability** specified in the **Schedule**.

Such percentage shall not be increased by the insolvency, bankruptcy, administration or receivership of others interested in the **Joint Venture**.

2.3.1.2. It is warranted that all fees and other income received by the **Insured** in consideration of the provision of the **Professional Services** as a **Joint Venture** partner shall be declared in writing as part of the **Insured's** annual renewal declaration or proposal.

2.3.1.3. **Underwriters** will not indemnify any **Insured** against any liability, **Loss** or **Defence Costs** arising out of, caused by, resulting from, in consequence of, in connection with or in any way involving any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the liability, **Loss** or **Defence Costs**:

2.3.1.3.1. any acts, errors or omissions of a **Joint Venture** partner; or

2.3.1.3.2. any **Claim** made against the **Insured** by a **Joint Venture** partner in relation to the **Joint Venture**.

3. LIMIT OF LIABILITY

3.1. The limit of **Underwriters'** liability for any **One Claim** shall not exceed the **Limit of Liability** specified in the **Schedule**. Sub-Limits are part of and not in addition to the **Limit of Liability**. The inclusion of more than one person or party as an **Insured** under this **Policy** does not operate to increase the total amount payable by **Underwriters** under this **Policy**.

3.2. The limit of **Underwriters'** liability for all **Claims** during the **Period of Insurance** shall not exceed the **Aggregate Limit of Liability** specified in the **Schedule**.

3.3. If the **Aggregate Limit of Liability** specified in the **Schedule** is greater than the **Limit of Liability** specified in the **Schedule**, **Underwriters** agree to reinstate the **Limit of Liability** in respect of any further liability, **Loss** or **Defence Costs** arising from any

subsequent **Claims** unrelated to any previously notified **Claims**. Such reinstatement of the **Limit of Liability** under this Clause shall only apply in excess of the total aggregate limit of indemnity available under any policy or policies which apply in excess of this **Policy**.

4. EXCLUSIONS

Underwriters will not indemnify any **Insured** against any liability, **Loss** or **Defence Costs** arising out of, caused by, resulting from, in consequence of, in connection with or in any way involving any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the liability, **Loss** or **Defence Costs**:

4.1. BODILY INJURY / FALSE ARREST

- 4.1.1. any **Bodily Injury**; or
- 4.1.2. any false arrest, false imprisonment, wrongful detention or malicious prosecution.

4.2. PROPERTY DAMAGE

any **Property Damage**.

4.3. TRADING DEBTS / BANKRUPTCY

- 4.3.1. any trading or personal debt of any **Insured** (including but not limited to any tax liability due or payable by any **Insured** or any fees, costs or expenses connected therewith) or any guarantee given by any **Insured** for any debt;
- 4.3.2. any insolvency, bankruptcy, administration or receivership of any **Insured**; or
- 4.3.3. any **Claim** or demand by a liquidator, administrator or trustee in bankruptcy to account for any preferential payment or to make any payment in respect of a void or voidable transaction.

4.4. INSURED'S CHARGES

any action to refund, account for, or pay damages calculated by reference to any fee, cost, charge, brokerage, commission, overrider or disbursement charged or incurred by any **Insured**.

4.5. PRIOR KNOWLEDGE / CLAIMS

- 4.5.1. any **Claim** first made against any **Insured** prior to the commencement of the **Period of Insurance**;
- 4.5.2. any acts, errors, omissions or facts which any **Insured** knew or ought to have known, prior to the commencement of the **Period of Insurance**, might give rise to a **Claim** or **Loss**;
- 4.5.3. any acts, errors, omissions or facts which were notified or could have been notified under any policy in force prior to the commencement of the **Period of Insurance**;
- 4.5.4. any pending or prior litigation or civil, criminal, administrative or regulatory proceedings, investigation or arbitration as at the commencement of the **Period of Insurance**; or
- 4.5.5. any new litigation derived from the same or essentially the same facts alleged in any pending or prior litigation.

4.6. RETROACTIVE DATE

any act, error or omission committed or alleged to have been committed prior to the **Retroactive Date**.

4.7. CONTRACTUAL UNDERTAKING

any liability assumed by any **Insured** by way of warranty, guarantee, contract, undertaking, hold harmless or indemnity unless such liability would have attached to any **Insured** in the absence of such warranty, guarantee, contract, hold harmless or indemnity.

4.8. RELATED / ASSOCIATED ENTITIES

any matter brought or maintained by or on behalf of:

- 4.8.1. any other **Insured** under this **Policy** or subsidiary or parent company of any **Insured**.
- 4.8.2. any person because the **Insured** did not employ them as an **Employee** or did not engage them as a contractor, sub-contractor or agent; or
- 4.8.3. any person who, at the time of the act, error or omission giving rise to the **Claim**:
 - 4.8.3.1. is a **Relative** of any **Insured**; or
 - 4.8.3.2. has a **Related Interest** in the subject matter of the **Claim**.

4.9. CONFLICT OF INTEREST

any **Conflict of Interest** of or by any **Insured**.

4.10. INTENTIONAL, WILFUL OR RECKLESS ACTS

any intentional, wilful or reckless:

- 4.10.1. act by any **Insured** without regard for the consequences thereof;
- 4.10.2. disregard by any **Insured** of the need to take all reasonable steps to prevent loss; or
- 4.10.3. breach of statute, contract or duty by any **Insured**.

4.11. DIRECTORS' AND OFFICERS' / TRUSTEES' LIABILITY

any **Insured** acting as a:

- 4.11.1. director, secretary or officer of a body corporate; or
- 4.11.2. trustee pursuant to a trust deed.

4.12. FINES / PENALTIES

any fines or penalties or any penal, punitive, exemplary, restitutorial, non-compensatory, liquidated, vindictive, aggravated, treble or any other damages resulting from the multiplication of compensatory damages.

4.13. INVESTMENT ADVICE / FINANCE / INSURANCE

4.13.1. any provision of any investment advice;

4.13.2. any agreement or proposed agreement to provide, facilitate or introduce finance; or

4.13.3. any provision of any insurance advice or any failure on the part of any **Insured** to obtain or maintain insurance cover.

4.14. FRAUD / DISHONESTY

4.14.1. any dishonest failure on any **Insured's** part to account for property belonging to another; or

4.14.2. any dishonest, fraudulent, criminal or malicious act or omission committed by any **Insured** or a consultant, subcontractor or agent of any **Insured**.

4.15. LAND / BUILDINGS / AIRCRAFT / WATERCRAFT / VEHICLES

any ownership, occupation, possession, leasing or use by or on behalf of any **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

4.16. POLLUTANTS

4.16.1. any actual or alleged presence, imminent or threatened discharge, dispersal, seepage, release, migration or escape of **Pollutants** at any time; or

4.16.2. any direction or request to test for, inspect, monitor, clean up, remove, contain, treat, rectify, detoxify or neutralise **Pollutants**, or in any way respond to or assess the effects of **Pollutants**.

4.17. TOXIC MOULD / ASBESTOS

4.17.1. any actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any **Toxic Mould**;

4.17.2. any action taken (including but not limited to investigating, testing for, detection of, monitoring of, treating, remedying or removing any **Toxic Mould**) by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any **Toxic Mould**;

4.17.3. any governmental or regulatory order, requirement, order, mandate or decree that any party take action (including but not limited to investigating, testing for, detection of, monitoring of, treating, remedying or removing any **Toxic Mould**) in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any **Toxic Mould**; or

4.17.4. any asbestos or any materials containing asbestos in whatever form or quantity.

4.18. NUCLEAR RISKS

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

4.19. WAR / TERRORISM

4.19.1. any **War**;

4.19.2. any **Terrorism**; or

4.19.3. any action to control, prevent or suppress such **War** or **Terrorism**.

4.20. JOINT VENTURES

any **Insured's** role as or acting as a part of a **Joint Venture**.

4.21. EMPLOYERS' LIABILITY

4.21.1. any **Bodily Injury** sustained by any person arising out of and in the course of his/her employment by any **Insured** under any contract of service or apprenticeship; or

4.21.2. any breach of any obligation owed by any **Insured** as an employer to an **Employee**.

4.22. VALUATIONS

any valuations carried out by or on behalf of the **Insured**.

5. CLAIMS CONDITIONS**5.1. NOTICE OF CLAIMS**

5.1.1. Every **Claim** made against the **Insured** shall be notified to **Underwriters** as soon as practicable and, in any event, prior to expiry of the **Period of Insurance**, and every letter, demand, writ, summons and legal process pertaining to such **Claim** shall be forwarded to **Underwriters** as soon as practicable after receipt.

5.1.2. All notifications of **Claims** to **Underwriters** must be sent to:

Newline Australia Insurance Pty Ltd
PO Box 16208
Collins Street West, Victoria, 8007

5.2. COOPERATION AND ASSISTANCE

5.2.1. The **Insured** agrees, at its expense, to:

- 5.2.1.1. give **Underwriters**, their investigators and legal representatives all information, documents and assistance **Underwriters**, their investigators and legal representatives require;
- 5.2.1.2. co-operate fully with **Underwriters**, their investigators and legal representatives in the conduct of the investigation, adjustment, defence, negotiation, settlement, avoidance or reduction of any **Claim**; and
- 5.2.1.3. do all things reasonably practicable to avoid or diminish a **Loss** hereunder.

5.2.2. The **Insured** agrees to waive any claim for legal professional privilege to the extent only that the privilege would otherwise prevent any investigator or legal representative from disclosing information to **Underwriters**.

5.3. NO ADMISSION OF LIABILITY

The **Insured** agrees not to:

- 5.3.1. admit liability for a **Claim**;
 - 5.3.2. settle a **Claim**; or
 - 5.3.3. incur any costs or expenses in connection with the **Claim**;
- without **Underwriters**' prior written consent.

5.4. REASONABLE STEPS AND PRECAUTIONS

If the **Insured** becomes aware of a circumstance which might give rise to a **Claim** against any **Insured**, the **Insured** will, at its own cost, thereafter take all reasonable steps and precautions to avoid or minimise any liability or costs and expenses arising from that circumstance.

5.5. CONDUCT OF DEFENCE OF CLAIM

The **Insured** agrees that **Underwriters**:

- 5.5.1. shall have conduct of the **Claim** against the **Insured**, including its investigation, adjustment, defence, negotiation, settlement, avoidance or reduction; and
- 5.5.2. may do so in the **Insured's** name.

5.6. CONSENT TO SETTLEMENT

Underwriters will not settle any **Claim** against any **Insured** without the prior consent of the **Named Insured**. If the **Named Insured** does not accept any recommendation for settlement by **Underwriters**, the liability of **Underwriters** will be limited to the amount of their liability had the **Named Insured** accepted the settlement recommended and **Underwriters** shall have no further liability for **Defence Costs**.

5.7. CLAIM GREATER THAN LIMIT OF LIABILITY

Where, in **Underwriters**' opinion, the quantum of any **Claim** is likely to exceed the **Limit of Liability**, **Underwriters** shall be entitled to discharge their liability in respect of the **Claim** (including **Defence Costs**) by paying the available **Limit of Liability** at their discretion to the **Insured** or on the **Insured's** behalf and, in such circumstances, **Underwriters** shall relinquish conduct of the **Claim**.

5.8. SUBROGATION

5.8.1. If **Underwriters** make any payment in relation to a liability, **Loss**, **Claim** or **Defence Costs** for which indemnity is provided under this **Policy**, **Underwriters** will be subrogated to all rights of indemnity, contribution or recovery of the **Insured** in relation thereto. The **Insured** will not surrender any right or settle any **Claim** for indemnity, contribution or recovery, without the prior consent of **Underwriters**. **Underwriters** will not subrogate any rights against an **Employee**, except in the case of that **Employee's** serious or wilful misconduct.

5.8.2. If **Underwriters** make a recovery in exercising their rights of subrogation under Clause 5.8.1, those monies recovered will be applied in the order of priority listed below:

- 5.8.2.1. reimbursement of costs and disbursements incurred by **Underwriters** in exercising their rights of subrogation and making the recovery;
- 5.8.2.2. reimbursement to **Underwriters** of any payment made to or on behalf of the **Insured** under this **Policy**;
- 5.8.2.3. reimbursement to the **Insured** for uninsured losses claimed and recovered as part of the subrogated action; and
- 5.8.2.4. reimbursement of the **Insured's Excess**.

5.9. FRAUDULENT CLAIMS

Underwriters may refuse to pay a fraudulent **Claim** for indemnity or any part of a **Claim** for indemnity that is fraudulent in accordance with section 56 of the Insurance Contracts Act 1984 (Cth) and may cancel this **Policy** in accordance with section 60 of the Insurance Contracts Act 1984 (Cth).

6. GENERAL CONDITIONS

6.1. OTHER INSURANCE AND EXCESS INSURANCE

6.1.1. If some other contract of insurance is entered into by the **Insured**:

- 6.1.1.1. which also covers liability, **Loss** or **Defence Costs** arising from a **Claim** presented under this **Policy**, the **Insured** must advise **Underwriters** at the time of presenting the **Claim**, liability, **Loss** or **Defence Costs** under this **Policy** and provide **Underwriters** with details of such other insurance.
- 6.1.1.2. this **Policy** is in excess of any **Additional Insurance** specified in the **Schedule**.

- 6.1.2. If some other contract of insurance is entered into by other parties on behalf of the **Insured** or under which the **Insured** is a beneficiary of that insurance ("Underlying Insurance"), which also covers liability, **Loss** or **Defence Costs** arising from a **Claim** presented under this **Policy**, such insurance shall be primary to the cover afforded by this **Policy** and **Underwriters** shall not be liable to indemnify the **Insured** until such Underlying Insurance is exhausted. For the avoidance of doubt, if such other insurance were exhausted, the **Limit of Liability** under this **Policy** would apply in excess of the limit of liability applying under the other insurance.

6.2. ALLOCATION

In the event the **Insured** is a party to a **Claim** or inquiry which is covered only in part by this **Policy**, the **Insured** and **Underwriters** will use their best efforts to agree upon a fair and proper allocation of **Loss**, **Defence Costs** or any other amount insured under this **Policy** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this **Policy**.

In the event that an agreement cannot be reached a Senior Counsel (to be mutually agreed upon by **Underwriters** and the **Insured**) or, in the absence of agreement, appointed by the President of The Law Society or equivalent organisation in the state or territory in which the **Claim** is made or inquiry commenced, shall, as an expert not as an arbitrator, determine a fair and proper allocation of **Loss**, **Defence Costs** or any other amount insured under this **Policy** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this **Policy**.

Until the Senior Counsel has made a determination **Underwriters** may, in their absolute discretion, indemnify the **Insured** against such **Loss**, **Defence Costs** or any other amount insured under this **Policy** as they consider appropriate. The cost of such Senior Counsel's opinion shall be deemed to be part of **Defence Costs**.

6.3. GST NEUTRALITY

The intention of this **Policy** is that, to the extent possible, as between the **Insured** and **Underwriters**, neither is to be adversely affected or advantaged by the operation of **GST**. If any party requires a tax invoice or the assistance of any other party to obtain an input tax credit, the other party will provide such invoice or assistance promptly upon being requested to do so.

6.4. EXCESS

- 6.4.1. Under this **Policy** **Underwriters** are not liable to pay with respect to any **One Claim** the amount of the **Excess**, which the **Insured** is liable to pay.
- 6.4.2. For the avoidance of doubt, the **Excess** also applies to **Defence Costs** (Definition 8.5 and/or Clause 1.2.6), Compensation for Court Attendance (Clause 2.2.1), Quasi Judicial Costs (Clause 2.2.4) and **Loss of Documents** (Clause 2.2.5).

6.5. ALTERATION OF RISK AND CANCELLATION

- 6.5.1. The **Insured** shall give **Underwriters** written notice as soon as practicable of any material alteration in risk during the **Period of Insurance** including:
- 6.5.1.1. any material change in the **Professional Services** offered by the **Insured**; and
 - 6.5.1.2. the external administration of any **Insured** (including but not limited to liquidation, receivership, administration or bankruptcy).
- 6.5.2. The **Insured** may cancel this **Policy** at any time by notifying **Underwriters** in writing. **Underwriters** reserve their right to charge short-term rates for time on risk. If the **Insured** has notified **Underwriters** of a **Claim** or any circumstances that might give rise to a **Claim** prior to or at the same time as providing such notice of cancellation, the **Premium** will be deemed to be fully earned at cancellation.
- 6.5.3. **Underwriters** may cancel or avoid this **Policy** in accordance with section 60 of the Insurance Contracts Act 1984 (Cth) or upon **Underwriters** becoming aware of or being notified of a material alteration of the risk covered by the **Policy** by notifying the **Named Insured** in writing.
- 6.5.4. Notification of cancellation shall be delivered in writing, either by email, facsimile or post by Certified Mail. Proof of sending or posting of such notice of cancellation will be sufficient proof of notification.

6.6. ASSIGNMENT

No change, modification or assignment of interest under this **Policy** shall be effective without **Underwriters**' prior written approval.

6.7. ADMINISTRATION

It is agreed that the **Named Insured** has acted and shall continue to act on behalf of each and every **Insured** with respect to all aspects of this **Policy** including, but not limited to, contract negotiations and any terms and conditions of binding, renewing, non-renewing and/or amending cover, endorsements, premiums, receipt of any notices regarding this **Policy**, dispute resolution matters, claims management, consent to defence or settlement, claim payments and exercising rights of any **Insured**.

6.8. JURISDICTION

In the event of a dispute arising under this **Policy** **Underwriters**, at the request of the **Insured**, will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon **Underwriters** may be served upon:

Lloyd's General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney, NSW, Australia, 2000

who has authority to accept service and to enter an appearance on **Underwriters'** behalf, and who is directed at the request of **Underwriters** to give a written undertaking to the **Named Insured** that he will enter an appearance on **Underwriters'** behalf.

7. INTERPRETATION

In this **Policy**, unless the context otherwise requires:

- 7.1. the singular includes the plural;
- 7.2. the male gender includes the female, and vice versa;
- 7.3. the words 'arising from' (and similar expressions) where used in this **Policy** imply a factual connection and not necessarily a causal connection;
- 7.4. any reference to an amount of money is a reference to that amount in Australian dollars; and
- 7.5. headings are merely descriptive and not to aid interpretation.

8. DEFINITIONS

In this **Policy**, unless the context otherwise requires:

- 8.1. **Automatic Policy Extension(s)** means the automatic policy extensions(s) at Clauses 2.2.1 to 2.2.7 of this **Policy**, to the extent that such are purchased by the **Insured** and agreed by **Underwriters**.
- 8.2. **Bodily Injury** means death, bodily injury, sickness, disease or disability, physical or mental stress, trauma or nervous shock and any consequences thereof (including post traumatic stress disorder, neurosis or phobia of any description).
- 8.3. **Claim** means a written demand for or an assertion of a right to civil compensation or civil damages in respect of any liability insured by this **Policy** or a written intimation of an intention to seek such compensation or damages.
- 8.4. **Conflict of Interest** means where any **Insured** provides **Professional Services** to a person or entity while being subject to a contrary interest, being:
 - 8.4.1. an interest of another person or entity; or
 - 8.4.2. a personal advantage interest;
 without having first disclosed the conflict of interest in writing and obtained the prior written consent of all interested parties for the **Insured** to provide **Professional Services** in those circumstances.
- 8.5. **Currency** means money, cheques, travellers' cheques, registered cheques, postal or money orders, bullion, negotiable or non-negotiable instruments, stamps and bearer or coupon bonds.
- 8.6. **Defence Costs** are legal costs and disbursements and related expenses reasonably and necessarily incurred by:
 - 8.6.1. the **Insured** with the prior written consent of **Underwriters** after reporting the **Claim** to **Underwriters**; or
 - 8.6.2. **Underwriters** after they have assumed conduct of any such proceedings,
 provided always that **Defence Costs** do not include any business, internal or overhead expenses (including any wages, salaries, commission, bonuses or other remuneration) of the **Insured** or the cost of the **Insured's** time.
- 8.7. **Documents** means deeds, wills, agreements, maps, plans, records, books, letters, forms and documents of any nature whatsoever whether written, printed or capable of being reproduced by any other method, but does not mean:
 - 8.7.1. **Currency**; or
 - 8.7.2. any computer or electronic data or any form of computer records or computer memory (whether programmes, software or otherwise).
- 8.8. **Employee** means any person under a contract of service or apprenticeship during or prior to the **Period of Insurance** other than any partner, principal or director of the **Named Insured**.
- 8.9. **Excess** means the amount specified as such in the **Schedule**.
- 8.10. **GST** means tax payable under A New Tax System (Goods & Services Tax) Act 1999 (Cth).
- 8.11. **Insured** is the **Named Insured** and:
 - 8.11.1. any person who is, during the **Period of Insurance**, an **Employee**, principal, partner or director of the **Named Insured**, but only in respect of work performed for the **Named Insured**;
 - 8.11.2. any former **Employee**, principal, partner or director of the **Named Insured**, but only in respect of work performed as an **Employee**, principal, partner or director for the **Named Insured**;
 - 8.11.3. the estate, spouse, heirs or legal personal representative or assigns of any person referred to in 8.11.1 and 8.11.2 provided always that such persons observe and are subject to all the terms, conditions, limitations, exclusions and any endorsements of this **Policy**.
 Any **Insured** means any one or more of the **Insured**.
- 8.12. **Intellectual Property** means copyright, design right, registered design, trademark or patent.
- 8.13. **Joint Venture** means a cooperative enterprise between the **Insured** and a third party (or parties) pursuing an agreed commercial goal or set of goals.
- 8.14. **Limit of Liability** means the amount(s) specified as such in the **Schedule**.
- 8.15. **Loss** means:
 - 8.15.1. compensatory damages payable by the **Insured** pursuant to an award or judgment entered against the **Insured**; and
 - 8.15.2. settlements in respect of any **Claim**, provided always that such settlement has been negotiated by **Underwriters** or entered into with **Underwriters'** prior written consent.**Loss** shall not include taxes, fines, penalties, disgorgement, constructive trust, punitive, exemplary, restitutive, non-compensatory, liquidated, vindictive, aggravated, treble or other damages resulting from the multiplication of compensatory damages or any liability deemed uninsurable at law.
- 8.16. **Loss of Documents** means any **Documents** which have been destroyed, damaged, lost or misplaced; and
 - 8.16.1. after a diligent search cannot be found; and

- 8.16.2.** which were the property of or entrusted to the **Insured** or to other persons to whom the **Insured** entrusted, lodged or deposited such **Documents** arising from the **Professional Services**.
- 8.17. Named Insured** means the Named Insured specified in the **Schedule**.
- 8.18. North America** means:
- 8.18.1.** the United States of America and Canada;
- 8.18.2.** any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
- 8.18.3.** any country or territory subject to the laws of the United States of America or Canada.
- 8.19. One Claim** means the aggregate of all amounts paid or payable in respect of any liability, **Loss** or **Defence Costs** and all **Claims**:
- 8.19.1.** against the **Insured** arising from:
- 8.19.1.1. one act or omission;
- 8.19.1.2. one series of related acts or omissions;
- 8.19.1.3. one matter or transaction;
- 8.19.1.4. the same or similar act or omission in a series of related matters or transactions; or
- 8.19.1.5. the same or similar act or omission in one or more matters or transactions for the same client;
- will be regarded as **One Claim**; or
- 8.19.2.** arising from dishonesty or fraud of any one person or any two or more people acting in collusion will be regarded as **One Claim**.
- Otherwise, each **Claim** will be regarded as a separate **Claim**.
- 8.20. Optional Policy Extension** means the optional policy extension at Clause 2.3.1 of this **Policy**, to the extent that such is purchased by the **Insured** and agreed by **Underwriters**.
- 8.21. Period of Insurance** means the period specified as such in the **Schedule**, unless cancelled pursuant to Clause 6.5.
- 8.22. Policy** means collectively all the terms, conditions, limitations, exclusions and all other provisions whatsoever of this document, the **Schedule** any endorsements and the written proposal form.
- 8.23. 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, silica, silicon, silicone, 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.
- 8.24. Professional Services** means those services detailed in the **Schedule**.
- 8.25. Premium** means the amount specified as such in the **Schedule** or as otherwise referenced in the **Schedule**.
- 8.26. Property Damage** means physical injury to or destruction of tangible property, including the resultant loss of use of that damaged or destroyed property and any consequential losses resulting therefrom.
- 8.27. Related Interest** means any interest exceeding 10% beneficially held (whether directly or indirectly through any firm, company, trustee or other entity) by or on behalf of the **Insured** or any **Relative** of the **Insured**.
- 8.28. Relative** means any spouse, de facto spouse, parent, child, or any parent or child of a spouse or de facto spouse.
- 8.29. Retroactive Date** means the date specified as such in the **Schedule**.
- 8.30. Schedule** means the schedule attached to this **Policy**.
- 8.31. Territorial Limits** means anywhere in the world other than **North America**.
- 8.32. Terrorism** means any act (other than of **War**) involving the use of or threat to the use of force or violence by any person or groups of persons whether acting alone or with any other organisation (or any government) and committed for political, religious, ideological or similar purposes so as to directly or indirectly influence any government and/or to put the public or any section of the public of any country in fear.
- 8.33. Toxic Mould** means any fungi, moulds, spores or mycotoxins of any kind.
- 8.34. War** means any act of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to a military uprising or usurped power.