

BROOKLYN 



**Resources Professionals
Combined Legal Liability
Policy Wording 06.15**

Introduction

The Insured and the Insurer agree that the Insurer will, in consideration of the paid premium, provide insurance to the Insured under the terms and conditions of this Policy. This Policy consists of your proposal, this document, the Policy Schedule and any Certificates and Endorsements affixed hereto. All of these should be read as if they were the one document.

Duty of Disclosure

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

You have the same duty to disclose those matters to the Insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

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

Non-Disclosure & Misrepresentations

If you fail to comply with your Duty of Disclosure, the Insurer may be entitled to reduce their liability under this Policy in respect of a claim or may cancel the Policy.

If your non-disclosure is fraudulent, the Insurer may also have the option of avoiding the contract from its beginning.

Privacy

Brooklyn Underwriting Pty Ltd collects personal information in order to provide its various services which include insurance broking, claims management, risk management consultancy, underwriting management, and reinsurance.

If the personal information Brooklyn Underwriting Pty Ltd requests from you is not provided, Brooklyn Underwriting Pty Ltd or any involved third party may not be able to provide the appropriate services.

Brooklyn Underwriting Pty Ltd discloses personal information to third parties who are involved in the provision of our services. For example, in arranging and managing your insurance needs Brooklyn Underwriting Pty Ltd may provide information (including sensitive information such as health information) to insurers, reinsurers, other insurance intermediaries, its advisors such as loss adjustors, lawyers and accountants, and other parties involved in the claims handling process. By submitting your proposal and continuing to deal with us, you confirm on your behalf and/or on behalf of those you represent consent to Brooklyn Underwriting Pty Ltd and these parties collecting, using and disclosing personal and sensitive information about you.

Brooklyn Underwriting Pty Ltd has a duty to maintain the confidentiality of its client's affairs which includes their personal information. Our duty of confidentiality applies except where disclosure of your personal information is with your consent or required by law.

Brooklyn Underwriting Pty Ltd may make use of your personal information to provide you with information about its products and services.

Simply contact the Brooklyn Underwriting Pty Ltd Privacy Officer on the details below if you would like to:

- Access the personal information Brooklyn Underwriting Pty Ltd holds about you
- Update or correct the information Brooklyn Underwriting Pty Ltd holds about you
- Discuss your privacy concerns
- Be removed from the mailing list to receive information about Brooklyn Underwriting Pty Ltd products and services

Privacy Officer - Brooklyn Underwriting - PO Box 101 Grosvenor Place - SYDNEY NSW 1220
Telephone: -02 8274 8177 , Fax: 02 9252 2538

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry.

It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs

Section 1: Professional Indemnity

Section 1.1 – Professional Indemnity, *Insuring Clauses*

Coverage under this Section is written on a claims made and notified basis, which means that, subject to Clause 1.3.2 Continuous Cover, it will only respond to Claims first made against the Insured and notified to the Insurer during the Period of Insurance. Any word or expression to which a specific meaning has been attached shall bear the specific meaning as defined in Section 4, Definitions, wherever it may appear.

1.1.1 Insuring Clause

The Insurer will indemnify the Insured against civil liability for compensation and claimant's costs and expenses in respect of any Claim first made against the Insured and notified to the Insurer during the Period of Insurance resulting from the conduct of the Professional Services by the Insured occurring after the Retroactive Date.

1.1.2 Limit of Indemnity

The liability of the Insurer for compensation and claimant's costs and expenses in respect of all Claims first made against the Insured and notified to the Insurer during the Period of Insurance shall not exceed the Limit of Indemnity.

1.1.3 Insured Costs

The Insurer will, in addition to the Limit of Indemnity, pay Insured Costs, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims exceeds the Limit of Indemnity, the liability of the Insurer for such Insured Costs shall be only that proportion which the Limit of Indemnity bears to the total amount of compensation and claimant's costs and expenses required to dispose of the Claim or Claims.

1.1.4 Excess

The Insured is liable for compensation and claimant's costs and expenses or Insured Costs that are collectively less than the Excess for each Claim. The Excess is deducted from compensation and claimant's costs and expenses payable before the application of the Limit of Indemnity.

The Insured is liable for Investigation and Enquiry Costs that are less than the Excess for each notice. The Excess is deducted from Investigation and Enquiry Costs payable before the application of the aggregate limit stated in Clause 1.3.4 Investigation and Enquiry Costs.

The Insurer has no liability for compensation and claimant's costs and expenses, Insured Costs or Official Investigation and Enquiry Costs that are less than the Excess for each Claim or notice. The Insured agrees that the Excess must be retained by the Insured and is to remain uninsured.

1.1.5 Aggregation of Claims

All Claims arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single Claim and shall attract one Excess.

For the purposes of Clause 1.3.4 Investigation and Enquiry Costs, all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single notice and shall attract one Excess.

Section 1.2 – Professional Indemnity, *Insurance Clarification*

For the purposes of clarifying the scope of cover under this Section, Section 1.1 Insuring Clause includes civil liability for:

1.2.1 Contractual Liability

Contractual liability, provided that the **Insurer** will not be liable for any liability assumed by the **Insured** under any warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the **Insured** in the absence of such agreement. Where a **Claim** alleges breach of contract, the **Insurer** will not reduce their liability by the fact that contributory negligence is not available as a defence.

1.2.2 Intellectual Property

Infringement of rights of intellectual property, provided that:

1. the infringement is committed by the **Insured** in the course of carrying on their **Professional Services**; and
2. the **Insured** did not intend to commit such infringement.

1.2.3 Libel or Slander

Libel or slander, provided that:

1. the libel or slander is committed by the **Insured** in the course of carrying on their **Professional Services**; and
2. the **Insured** did not intend to commit the libel or slander.

1.2.4 Sub-contractors and Consultants

Acts, errors or omissions of sub-contractors and consultants of the **Insured**, provided that the **Insurer** will only indemnify the **Insured** for its civil liability in connection with the **Professional Services** provided by the subcontractor and/or consultant whilst working on behalf of the **Insured** and for whom the **Insured** is responsible. Indemnity will not extend to the sub-contractor and/or consultant who committed the act, error or omission.

1.2.5 Consumer Protection Legislation

Claims resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation, provided that the **Insurer** will not indemnify the **Insured** for **Claims** made where such **Claim** arises:

1. under the penal or criminal provisions of the above Acts, or any similar legislation; or
2. from conduct of the **Insured** which is fraudulent or intended to mislead or deceive.

However the **Insurer** will only exclude such **Claims** where it is established by final adjudication that the **Insured** breached the penal or criminal provisions of the Acts, or where the conduct was established by final adjudication to be fraudulent or intended to mislead or deceive.

Section 1.3 – Professional Indemnity, *Automatic Extensions*

These Automatic Extensions are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under this Section 1.3 - Automatic Extensions, will be part of and not in addition to the **Limit of Indemnity**, unless otherwise stated.

1.3.1 Automatic Reinstatement

In the event of exhaustion or partial exhaustion of the **Limit of Indemnity** solely by reason of indemnity granted for compensation and claimant's costs and expenses in respect of **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**, the **Insurer** agrees to reinstate (or partially reinstate in the case of partial exhaustion) the **Limit of Indemnity** in respect of compensation and claimant's costs and expenses. Provided that:

1. the **Insurer's** liability for any single **Claim** will not exceed the **Limit of Indemnity**; and
2. the aggregate liability of the **Insurer** under this **Policy** will not exceed the sum of the **Limit of Indemnity** and, in the event of exhaustion or partial exhaustion of the **Limit of Indemnity**, a single reinstatement of the **Limit of Indemnity**, save that the **Insurer** will in addition pay **Insured Costs** on the basis already set out in this **Policy**.

1.3.2 Continuous Cover

Where the **Insured** first became aware of facts or circumstances which may give rise to a **Claim** prior to the **Period of Insurance**, and had not notified the **Insurer** of such facts or circumstances prior to the **Period of Insurance**, then Clause 1.4.5 Prior Claims or Known Circumstances will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such facts or circumstances, provided that:

1. 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; and
2. the **Insured** has, at the time of notification of the **Claim**, been insured without interruption under a professional indemnity **Policy** issued by the **Insurer**, and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances; and
3. the **Insurer** may reduce its liability under this **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to the **Claim** prior to the **Period of Insurance**.

1.3.3 Dishonesty of Employees

The **Insurer** will, notwithstanding Clause 3.5 Dishonest, Fraudulent or Criminal Acts, indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from any dishonest, fraudulent, criminal or malicious act or omission by any employee of the **Insured** occurring or committed in connection with the **Professional Services**.

Nothing in this Automatic Extension shall require the **Insurer** to indemnify any employee who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who has by act or omission condoned any such act or omission.

1.3.4 Official Investigation and Enquiry Costs

The **Insurer** will indemnify the **Insured** for **Investigation and Enquiry Costs**, provided that:

1. the notice requiring the **Insured's** attendance at the enquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Period of Insurance**; and
2. such attendance results directly from an act, error or omission committed or allegedly committed by the **Insured** in carrying on their **Professional Services**; and
3. such indemnity is subject to the written consent of the **Insurer** prior to incurring **Official Investigation and Enquiry Costs**, and does not include any regular or overtime wages, salaries or fees of the **Insured**; and
4. the total liability of the **Insurer** under this clause shall not exceed AUD250,000.

1.3.5 Joint Venture Liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from the **Insured's** participation in a joint venture in connection with the **Professional Services**. Provided that any indemnity given shall relate only to the **Insured's** proportion of any liability incurred by such joint venture.

1.3.6 Lost Documents

The **Insurer** will, in the event of loss of or damage to **Documents** occurring in connection with the **Insured's** conduct of the **Professional Services**, indemnify the **Insured** against costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents**, provided that:

1. such loss or damage is sustained during the **Period of Insurance** while the **Documents** are either in transit to or in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them in the course of the normal conduct of the **Professional Services**; and
2. the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the **Insurer** with the consent of the **Insured** or if such consent is withheld, by the President of the Law Society in whichever State the **Policy** was issued; and
3. the **Insurer** shall not be liable in respect of loss or damage caused by riot or civil commotion.

1.3.7 Claims Preparation Costs

The **Insurer** will pay up to AUD25,000 in the aggregate during the **Period of Insurance** for reasonable professional fees and such other expenses incurred by the **Insured** for the preparation of any Claim that is covered under this Policy.

The cover provided under this Policy Extension operates in addition to the Limit of Indemnity or Aggregate Limit of Indemnity (whichever may be applicable).

Provided always that such cover shall not include any **Investigation and Enquiry Costs**.

1.3.8 Court Attendance Costs

For any person described in (a) or (b) below who actually attends court as a witness in connection with a **Claim** notified under and covered by this **Policy**, it is agreed that **Investigation and Enquiry Costs** will include the following rates per day on which attendance in court has been required:-

- (a) for any person who was or is a principal, partner or director of the Named Insured: AUD500.
3.
- (b) for any person who was or is an Employee of the Named Insured: AUD250.

No Deductible shall apply to this Automatic Extension.

1.3.9 Statutory Liability

The **Insurer** will, notwithstanding Clause 3.7 Fines, Penalties, Punitive or Aggravated Damages, indemnify the **Insured** against their breach of statutory duty resulting from the conduct of the **Insured's Professional Services** involving:

- 1) any civil offence,
- 2) breach of occupational health and safety law or regulation.
- 3) any strict liability offence in connection with the discharge, dispersal, release or escape of Pollutants.

Nothing in this Automatic Extension shall require the **Insurer** to indemnify the **Insured** in connection with any breach of statutory duty directly or indirectly based on, arising out of or attributable to the reckless or grossly negligent conduct of the **Insured**, or any intentional breach or violation of law by the **Insured**.

The total liability of the **Insurer** for all cover under this extension shall not exceed AUD100,000 in the aggregate for all **claims** inclusive of **Insured Costs**

Section 1.4 – Professional Indemnity, *Exclusions*

This Section 1 does not apply to:

1.4.1 Anti-Competitive Behavior

Any **Claim** arising directly or indirectly from or in respect of any actual or alleged breach of any anti-competitive, anti-trust, unfair competition, or restraint of trade law, legislation or regulation.

1.4.2 Personal Injury and Property Damage

Any **Claim** arising directly or indirectly in respect of death, disease or illness of or **Personal Injury** to any person or loss of or damage to **Property** unless resulting from the **Insured's Professional Services**.

1.4.3 Directors' and Officers' Liability

Any **Claim** arising directly or indirectly from or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

1.4.4 Prior Claims or Known Circumstances

Any **Claim** arising directly or indirectly from or in respect of:

1. any **Claim** first made against the **Insured** prior to the **Period of Insurance**; or
2. any circumstances, acts, errors or omissions which were:
 - i. known to the **Insured** prior to the **Period of Insurance** and the **Insured** ought reasonably have expected to give rise to a **Claim** or **Official Investigation and Enquiry Costs**; or
 - ii. notified under any insurance that was in force prior to the **Period of Insurance**.

1.4.5 Retroactive date

Any **Claim** arising directly or indirectly from or in connection with the conduct of the Insured's **Professional Services** which took place or are alleged to have taken place prior to the **Retroactive Date**

In addition to the above Exclusions, please refer to **Section 3 General Exclusions** which are also applicable to this Policy Section 1.

Section 2: General and Products Liability

Coverage under this Section is provided on an occurrence basis, as defined in Insuring Clause 2.1. Any word or expression to which a specific meaning has been attached shall bear the specific meaning as defined in Section 4, Definitions, wherever it may appear.

Section 2.1 – General and Products Liability, *Insuring Clause*

Subject to the **Limit of Liability** under this Section and the terms and conditions of this **Policy** the **Insurer** agrees to pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as a result of a **Claim** for **Compensation** in respect of **Personal Injury** or **Property Damage** which occurs during the **Period of Insurance** and within the **Territorial Limits** caused by an **Occurrence** in connection with your **Business**.

Section 2.2 – General and Products Liability, *Limit of Liability*

The liability of the **Insurer** to pay **Compensation** as a result of an **Occurrence** shall not exceed the **Limit of Liability** as stated in the **Policy Schedule** irrespective of the number of **Claims**. All **Occurrences** directly or indirectly arising out of or in connection with one source or original cause shall be treated as one **Occurrence** for all purposes relating to this Section.

The total aggregate liability of the **Insurer** to pay **compensation** as a result of an **Occurrence** in respect of or in any way related to **Products** shall not exceed the specified Sub-Limit of Liability as stated in the **Policy Schedule**.

The total aggregate liability of the **Insurer** to pay **compensation** as a result of an **Occurrence** in respect of or in any way related to **Pollution** shall not exceed the specified Sub-Limit of Liability as stated in the **Policy Schedule**.

Section 2.3 – General and Products Liability, *Additional Payments*

In addition to the **Limit of Liability** the **Insurer** agrees to pay the following Additional Payments resulting from any **Claim** or **Occurrence** which is otherwise covered by this **Policy**:

2.3.1 Legal Costs

All Legal Costs and Expenses incurred by the **Insured** with the written consent of the **Insurer**

2.3.2 Solicitors Fees

All Solicitors' Fees incurred by the **Insured** with the written consent of the **Insurer** for representation of any of the Persons Insured by this Policy at any coroner's inquest or in any court of summary jurisdiction

2.3.3 First Aid

All expenses incurred by the **Insured** for first aid to others at the time of **Personal Injury**

2.3.4 Preservation of Property

All expenses incurred by the **Insured** for the temporary repair or shoring up or preservation of property which has been damaged

provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim** or **Claims** exceeds the **Limit of Liability** as stated in the Schedule, the liability of

the **Insurer** for Additional Payments under this Section shall be only that proportion which the **Limit of Liability** bears to the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim** or **Claims**.

Section 2.4 – General and Products Liability, *Exclusions*

This Section 2 does not apply to:

2.4.1 Aircraft, Hovercraft and Watercraft

Any **Claims** directly or indirectly caused by or arising from the ownership possession or operation by or on behalf of the **Insured** of any:

- a) airlines, aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks.
- b) hovercraft or watercraft other than hand propelled watercraft or other watercraft not exceeding 8 metres in length and then only whilst on inland waterways or up to 5 Kilometres offshore.

2.4.2 Defamation

Any **Claim** arising out of any defamatory publication or utterance or malicious falsehood:

- (a) made prior to the commencement of the **Period of Insurance**; or
- (b) made at the Insured's direction with knowledge of its falsity or reckless disregard for its truth or falsity; or
- (c) made in connection with advertising, broadcasting, telecasting or publishing activities conducted by or on the **Insured's** behalf.

2.4.3 Defective Products

Any claim involving the **Insured's Products**, if such damage is attributable to any defect or deficiency in those **Products** or their harmful nature or unsuitability.

2.4.4 Product Withdrawal, Recall and Loss of Use

Any **Claim** for **Damages** involving the withdrawal, recall, inspection, repair, replacement or loss of use of the **Insured's Products**, or of any property of which such **Products** form a part, if such **Products** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.

2.4.5 Professional Liability

Any **Claim** arising out of or in connection with the rendering of or failure to render advice, design, formula, specification or any other related act, error or omission or out of any **Professional Services** performed by or on behalf of the **Insured** including:

1. Statutory inspections and supervision of men, machinery and plant;
2. The preparation or approval of maps, plans, opinions, reports, surveys, designs or specifications;
3. Supervisory, inspection and engineering services; and
4. Mine management

2.4.6 Property Owned

(a) Any claim involving property of the **Insured's** Employees, or Vehicles which are not used by or on the **Insured's** behalf but which are damaged whilst in the **Insured's** car park, provided that the **Insured's Business** does not include ownership or operation of a car park for reward.

2.4.7 Vehicles

Personal Injury or **Property Damage** arising out of the ownership, maintenance, possession or use by an Insured of any **Vehicle**:

- (a) which is registered, or which is required to be registered: or
- (b) in respect of which insurance is required by virtue of any legislation;
- (c) Which is otherwise insured in respect of the same liability.

This Exclusion shall not apply to **Personal Injury** or **Property Damage** arising from:

- (i) The delivery or collection of goods to or from any **Vehicle** where such **Personal Injury** or **Property Damage** occurs beyond the limits of any road, carriageway or thoroughfare; or
- (ii) The loading or unloading of any **Vehicle**.

2.4.8 Workers Compensation

Any liability which the **Insured** may incur, whether under the provisions of any Worker's Compensation legislation, industrial award, agreement or determination or otherwise, toward any **Employee** of that Insured for **Personal Injury** suffered by that **Employee**.

2.4.9 Goods in Care, Custody and Control of the Insured

The **Insurer** shall not be liable for **Property Damage** to property owned by or leased or rented to or in the care custody or control of the **Insured** other than:

- a) **Employees'**, directors', partners' and/or visitors' property;
- b) Premises not owned by or leased or rented to the Insured at which the Insured is undertaking work in connection with the **Business**;
- c) **Property Damage** to property (other than premises) leased or rented to or in the care, custody or control of the Insured other than the first AUD50,000 of each and every occurrence and in the aggregate during any one period of insurance.

Section 3: General Exclusions

The **Insurer** shall not be liable in respect of any **Claim**, liability, compensation, Investigation and Enquiry Costs, claimant's costs and expenses or **Insured Costs** involving:

3.1 Asbestos

Any **Claim** arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos.

3.2 Assumption of Liability

Any **Claim** arising directly or indirectly from or in respect of any liability which is assumed by the **Insured** outside the normal course of their performance of **Professional Services**.

3.3 Contractual Obligations

Any **Claim** for performance of the **Insured's** obligations under any contract, including an agreement to indemnify any other person or organisation against a loss or liability, or for damages for the **Insured's** failure to perform such an obligation. This includes but is not limited to contractual obligations toward others arising out of or involving injuries to the **Insured's** Employees.

This Exclusion, however, shall not apply to statutory warranties, or to any liability for **Personal Injury** or **Property Damage** which would nevertheless have been imposed upon the **Insured** even in the absence of such a contractual obligation.

3.4 Controlling or Financial Interests

Any **claim** arising directly or indirectly from or in respect of work undertaken for or on behalf of any company related to any **Insured**, which for the purposes of this **Policy** includes:

1. any other **Insured**; or
2. any subsidiary of an **Insured**; or
3. any company of which an **Insured** holds or has held at least a 20% financial interest and has had or has board representation at that company.

3.5 Dishonest, Fraudulent or Criminal Acts

Any **claim** arising directly or indirectly from or in respect of any dishonest, fraudulent, criminal or malicious act or omission by the **Insured**.

3.6 Employer's Liability

Any **claim** arising directly or indirectly from or in respect of:

1. the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of their employment; or
2. a breach of any obligation owed by an **Insured** to an **Insured**.

3.7 Fines, Penalties, Punitive or Aggravated Damages

Any **Claim** arising directly or indirectly from or in respect of fines or penalties including civil penalties, punitive or aggravated damages.

3.8 Liquidated Damages

Any **Claim** arising directly or indirectly from or in respect of liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.

3.9 North America

Any **Claim** arising directly or indirectly from or in respect of:

1. any civil liability resulting from the conduct of the **Professional Services** within **North America**;
or

2. the provision of **Professional Services** to persons in **North America**; or
3. any **Claim** brought against the **Insured** in any court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders in **North America**; or
4. any **Claim** arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in **North America**.

3.10 Pollution and Pollutants

Any liability, of any kind arising directly or indirectly out of or in connection with Pollution, including but not limited to the prevention, clean up or containment of it, any **Personal Injury** or **Property Damage** caused by it and the remediation of any environment affected by it; provided however, that this Exclusion shall not apply where the Insured has proved, that the discharge, dispersal, release or escape of **Pollutants**:

- (a) did not occur gradually over a period of time but suddenly, at an identifiable point in time; and
- (a) was entirely unexpected, unintended and fortuitous from the standpoint of the Insured, and
- (b) was the result of a negligent act, error or omission in the course of the **Insured's Professional Services** as stated in the **Schedule**.

3.11 Radioactivity

Any claim arising directly or indirectly from or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any nuclear device or assembly, or component thereof.

3.12 Subrogation Waiver

Any claim arising directly or indirectly from or in respect of any liability which is incurred or affected by reason of the **Insured** entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against another.

3.13 Terrorism

Any claim arising directly or indirectly from or in respect of:

1. any **Act of Terrorism**; or
2. any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

3.14 Trading Debts

Any **Claim** arising directly or indirectly from or in respect of any trading debt incurred, or any guarantee in respect of such debt given, by the **Insured**.

3.15 War

Any **Claim** arising directly or indirectly from or in respect of any war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

Section 4: Definitions

When used in this **Policy**, its **Schedule** and its endorsements the following definitions shall apply:-

- 4.1 Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purpose or reason, including the intention to influence any government or to put the public, or any section of the public, in fear.
- 4.2 Business** means all the activities and operations of the **Insured** as stated in the **Schedule** and (for the purpose of Section 2 only) the ownership and tenancy of premises, private work carried out with the **Insured's** consent by employees for any director or senior officer of the **Insured**.
- 4.3 Claim** means any demand made by a third party upon the **Insured** for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process.
- 4.4 Compensation and Damages**
Means monetary compensation, civil damages, judgments or awards which the **Insured** is legally obligated to pay or a settlement negotiated with the Insurer's prior written consent. This does not include **Insured Costs** or punitive, exemplary or aggravated damages, fines or penalties.
- 4.5 Documents** means deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed **Documents** or forms of any nature, but excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments, which is the property of the **Insured** or for which the **Insured** becomes responsible during the conduct of their **Professional Services**.
- 4.6 Employee** means any:
1. employee being a person under a contract of service or apprenticeship with the **Insured**
 2. labour master and persons supplied by him
 3. person employed by labour only sub-contractors
 4. self employed person under the control of the **Insured**
 5. person hired to or borrowed by the **Insured**
 6. person undertaking study or work experience or youth training scheme with the **Insured** working for the **Insured** in connection with the **Business**.
- 4.7 Enquiring Body** means a court, tribunal or legally constituted industry or professional body.
- 4.8 Excess** means the amount shown in the **Schedule** and represents the first amount which is payable by the **Insured** in respect of compensation and claimant's costs and expenses or **Insured Costs** arising out of or in respect of any one **Claim** made against the **Insured** or in respect of any **Official Investigation and Enquiry Costs** arising out of any one notice.
- 4.9 Investigation and Enquiry Costs** means necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice requiring the **Insured's** attendance at an enquiry or hearing held before an **Enquiring Body**.
- 4.10 Insured** means:
1. the named individual(s), legal entity or entities specified in the **Schedule**; and
 2. past and/or present employees of the legal entity or entities specified in the **Schedule**, but only in their capacity as such; and
 3. any past and/or present sole practitioner, partner or a director of the legal entity or entities specified in the **Schedule**, but only in their capacity as such; and

4. the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.

4.11 Insured Costs means all necessary and reasonable costs and expenses incurred by the Insurer, or by the Insured with the Insurer's prior written consent, in defending, investigating or settling any Claim (not being Official Investigation and Enquiry Costs or claimant's costs and expenses).

4.12 Insurer means Certain Underwriters at Lloyd's.

4.13 Limit of Indemnity means the **Limit of Indemnity** as shown in the **Schedule**.

4.14 Limit of Liability and Sub-Limit of Liability means the amounts specified as such in the **Schedule**.

4.15 North America means the United States of America and Canada and their territories and protectorates.

4.16 Occurrence means an event, including continuous or repeated exposure to the same or similar conditions, which causes **Personal Injury** or **Property Damage** neither expected nor intended from the Insured's standpoint.

4.17 Period of Insurance means the **Period of Insurance** as shown in the **Schedule**.

4.18 Personal Injury means:

- (a) bodily Injury, sickness, disease or disability, including resultant death;
- (b) false arrest or false imprisonment, wrongful detention or wrongful eviction, malicious prosecution or humiliation;
- (c) malicious falsehood, defamation or breach of the right to privacy; or
- (d) trespass to the person, assault or battery, not committed by or at the Insured's direction unless for the purpose of preventing or eliminating imminent or present danger to persons or property.

4.19 Policy means the **Schedule**, the terms of this **Policy** and any endorsements thereto.

4.20 Pollutants means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke vapours and fumes.

4.21 Products means anything, after it has ceased to be in the **Insured's** possession or under the **Insured's** control, which is manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured** (including any container other than a **vehicle**).

4.22 Professional Services means the **Professional Services**, described in the **Schedule**, of the named individual(s), legal entity or entities specified in the **Schedule**.

4.23 Property Damage means physical injury to or destruction of tangible property, including the resultant loss of use of that damaged or destroyed property.

4.24 Retroactive Date means the **Retroactive Date** shown in the **Schedule**.

4.25 Schedule means the **Schedule** attaching to and forming part of this policy.

4.26 Territorial Limits means worldwide excluding **North America**.

4.27 Vehicle means any form of mobile, mechanically-powered conveyance which may be used for the transportation of goods or persons by land, sea, air or under the ground. It includes all such machines which are intended wholly or partially for recreational purposes, but does not include any plant or equipment while it is being used as such.

Section 5: General Conditions

5.1 Assistance with Claims

The **Insured** shall give all such assistance as the **Insurer** may reasonably require but shall not be required to contest any legal proceedings if the **Insured** objects to doing so unless Senior Counsel or a person of similar authority (appointed by mutual agreement between the **Insured** and the **Insurer** and paid for by the **Insurer**) shall advise such proceedings could be contested to the extent that there is a reasonable probability of success.

5.2 Cancellation

The **Insured** may cancel this **Policy** at any time by written request to the **Insurer**. Upon receipt of such request, the **Insurer** will retain a short period premium calculated on the **Insurer's** short term rates for the time it has been on risk and the **Insured** will receive a refund of any balance of the premium actually paid. The **Insurer** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984 by giving notice in writing to the **Insured** of the date from which such cancellation is to take effect.

5.3 Claims Conduct

The **Insurer** shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

5.4 Claims Notification

Every **Claim** made against the **Insured** shall be notified to the **Insurer** 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 the **Insurer** as soon as practicable after receipt. All **Claim** notifications to the **Insurer** must be sent to: The Claims Manager, Brooklyn Underwriting Pty Ltd, PO Box 101, Grosvenor Place NSW 1220

5.5 Claims Settlement

Should the **Insured** object to a proposal by the **Insurer** to settle or compromise any **Claim** and wish to contest or litigate the matter, then the **Insured** may so elect, provided that the **Insurer's** liability in respect of any such **Claim** so contested or litigated shall not exceed the amount for which, but for such election, the **Claim** could have been settled or compromised by the **Insurer**, together with costs and expenses payable in accordance with the terms of this **Policy** and incurred up to the time of such election.

5.6 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Insured** an amount on account of GST. The **Insured** must inform the **Insurer** of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform the **Insurer** of its entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** liability to the **Insured** will be calculated taking into account any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

5.7 Governing Law

This **Policy** will be governed in accordance with the laws of Australia. Any disputes relating to the interpretation of this **Policy** will be submitted to the exclusive jurisdiction of the courts of Australia.

5.8 No Admission of Liability

No admission, offer, promise or indemnity shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer**.

5.9 Other Insurance

If at the time a claim under this **Policy** arises there is any other insurance in force covering the same liability the **Insured** shall promptly notify to the **Insurer** full details of such other insurance, including the identity of the **Insurer** and the **Policy** number, and such further information as the **Insurer** may reasonably require.

5.10 Payment of Premium

The **Insured** must pay the agreed premium to the **Insurer** by the due date. The due date is on or before 30 days after the inception date of the **Period of Insurance** as specified in the **Schedule** or such other time the **Insurer** agrees to in writing. If the **Insured** fails to pay the premium by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

5.11 Severability and Non-Imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

1. comply with the Duty of Disclosure in terms of the Insurance Contracts Act 1984; or
2. comply with any obligation in terms of this **Policy**; or
3. refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under the terms of this **Policy**, provided that such remaining party or parties shall:

- i. be entirely innocent of and have had no prior knowledge of any such failure; and
- ii. as soon as practicable after becoming aware of any such failure, advise the **Insurer** in writing of all the relevant circumstances.

War and Civil War Exclusion Clause

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

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Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause

This Policy does not cover

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

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NMA1622

Lloyd's Australian Alternative Disputes Resolution Clause

In the event that a dispute arises between Underwriters and the **Insured/Reinsured** out of or otherwise in relation to this agreement, then:

- (a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "**Dispute Notice**") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- (b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
 - 1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (**LEADR**) (or other appropriate professional body as agreed by the parties); or

2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
 - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
 - (b) will act as an expert and not as an arbitrator;
 - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
 - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- (c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and 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 Underwriters' General Representative in Australia

Suite 2, Level 21

Angel Place

123 Pitt Street

Sydney

NSW 2000

Australia

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

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Australia Terrorism Insurance Act 2003 Notice

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

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