

Professional Liability
Specified Professions

Professional Liability Specified Professions

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

Covers

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

Professional Liability The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** for any **Breach of Duty** of the **Insured**.

Misleading or Deceptive Conduct The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** for any **Misleading or Deceptive Conduct** of the **Insured**.

Intellectual Property The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** for any **Infringement**.

Defamation The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any **Claim** for libel or slander committed unintentionally by an **Insured**.

Fraud/Dishonesty The **Insurer** will pay on behalf of any **Insured**, who is not the actual perpetrator, all **Damages** resulting from any **Claim** for **Fraud/Dishonesty** of any **Employee**.

Defence The **Insurer** has the right to defend any **Claim** which this policy may respond to under its **Covers** or **Extensions**. The **Insurer** shall pay **Defence Costs** incurred in defending such **Claim**.

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

Extensions

Court Attendance

For any person described in (i) and (ii) below who actually attends court as a witness in connection with a **Claim** notified under and covered by this policy, **Defence Costs** will include the following rates per day for each day on which attendance in court has been required:

- (i) for any principal, partner, or director **Insured** \$ 500
- (ii) for any **Employee** \$ 250

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

Extended Reporting Period

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

Lost Documents

With respect to a **Third Party's Documents**:

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

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

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

This Extension will be subject to a Sublimit of Liability of \$ 250,000. A separate retention of \$ 1,000 instead of the **Retention** will apply to each **Claim** covered under this Extension.

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Definitions

“Bodily Injury”	means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.
“Breach of Duty”	means any actual or alleged breach of duty, negligent act, error, misstatement, breach of confidentiality or omission in the performance of or failure to perform Professional Services .
“Claim”	means any: (i) written demand; or (ii) civil or administrative proceeding; that seeks Damages as a result of Wrongful Acts .
“Damages”	means any amount that an Insured shall be legally liable to pay to a Third Party in respect of judgments rendered against an Insured , or for settlements which conform with the consent requirements set out in the “Claims” Conditions, subject to the limitations of “Loss” .
“Defence Costs”	means reasonable fees, costs and expenses incurred by or on behalf of the Insured in the investigation, defence, adjustment, settlement or appeal of any Claim . “Defence Costs” shall not mean any internal or overhead expenses of any Insured or the cost of any Insured’s time.
“Documents”	means all documents of any nature whatsoever including computer records and electronic or digitized data; but does not include any currency, negotiable instruments or records thereof.
“Employee”	any natural person who is or has been expressly engaged as an employee under a contract of employment with the Policyholder or any Subsidiary . “Employee” shall not mean any: (i) principal, partner or director; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.
“Fraud/Dishonesty”	means fraudulent or dishonest conduct of an Employee : (i) not condoned, expressly or implicitly, by; and (ii) that results in liability to; the Policyholder or any Subsidiary .
“Infringement”	means an unintentional infringement of any intellectual property right of any Third Party , other than patents and Trade Secrets .
“Insured”	means: (i) the Policyholder or any Subsidiary ; (ii) any natural person, who is or has been a principal, partner or director of the Policyholder or any Subsidiary ; (iii) any Employee ; and (iv) any temporary contract labour, self-employed persons, labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the Policyholder or any Subsidiary ; but only when providing Professional Services in the foregoing capacities. Insured also includes any estate or legal representatives of any Insured described in (ii) and (iii) of this definition with respect to the Insured’s provision of Professional Services in any such capacity.
“Insurer”	means the entity specified as such in the Schedule.
“Limit of Liability”	means the amount specified as such in the Schedule.

Definitions (Continued)

“Loss”	means Damages and Defence Costs . “Loss” shall not mean and this policy shall not cover any (1) taxes payable by the Insured ; (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (3) restitutionary relief; (4) fines or penalties; (5) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (6) employment related compensation or benefits, overhead, charges or expenses of any Insured ; or (7) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a Claim is brought.
“Misleading or Deceptive Conduct”	means any actual or alleged misleading or deceptive conduct at law or under the <i>Corporations Act 2001</i> (Cth), <i>Australian Securities and Investments Commission Act 2001</i> (Cth), <i>Trade Practices Act 1974</i> (Cth) or any similar provisions in the States’ Fair Trading Acts.
“Policy Period”	means the period of time specified in the Schedule unless the policy is cancelled in which event the Policy Period will end on the effective date of the cancellation.
“Policyholder”	means the entity or natural person specified as such in the Schedule.
“Pollutants”	means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. “Waste” includes, but is not limited to, material to be recycled, reconditioned or reclaimed.
“Premium”	means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.
“Professional Services”	means the professional services of the Policyholder and any Subsidiary as specified in the Schedule.
“Property Damage”	means damage to or loss of or destruction of tangible property or loss of use thereof.
“Retention”	means the amount specified as such in the Schedule.
“Retroactive Date”	means the date specified as such in the Schedule.
“Subsidiary”	means companies in which the Policyholder , either directly or indirectly through one or more of its Subsidiaries ; (i) controls the composition of the board of directors; (ii) controls more than half of the voting power; or (iii) holds more than half of the issued share capital. For any Subsidiary or any Insured thereof, cover under this policy shall only apply to Wrongful Acts committed while such entity is a Subsidiary of the Policyholder .
“Third Party”	means any entity or natural person; provided, however, Third Party does not mean: (i) any Insured ; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the Policyholder or any Subsidiary .
“Trade Secret”	means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.
“Wrongful Act”	means any Breach of Duty , Misleading or Deceptive Conduct , Infringement , libel, slander, or Fraud/Dishonesty .

Exclusions

This policy shall not cover **Loss** in connection with any **Claim**:

- Anti-competitive Conduct* arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition;
- Bodily Injury/
Property Damage* arising out of, based upon or attributable to **Bodily Injury** or **Property Damage** unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**;
- Contractual Liability/
Performance Guarantees* arising out of, based upon or attributable to any:
- (i) contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the professional services provided, taking into consideration any specialised knowledge or expertise;
 - (ii) guarantee or warranty; or
 - (iii) delay in performing, failing to perform or failing to complete any **Professional Services**, unless such delay or failure arises from a **Breach of Duty** by an **Insured**;
- Costs Assessment* arising out of, based upon or attributable to any failure by any **Insured** or other party acting for the **Insured** to make an accurate pre-assessment of the cost of performing **Professional Services**;
- Employment/
Discrimination* arising out of, based upon or attributable to any: (i) actual or alleged employment related: practices, harassment or discrimination; or (ii) intentional or systemic harassment or discrimination;
- Infrastructure* arising out of, based upon or attributable to:
- (i) mechanical failure;
 - (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
 - (iii) telecommunications or satellite systems failure;
- Insolvency* arising out of, based upon or attributable to the insolvency, administration or receivership of the **Insured**;
- Intentional Acts* arising out of, based upon or attributable to any deliberate or reckless **Breach of Duty**;
- Joint Ventures* arising out of, based upon or attributable to work carried out by the **Insured** for and in the name of any association or joint venture of which an **Insured** forms part;
- Misdeeds* arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an **Insured** admits, to be a criminal, dishonest or fraudulent act; and in such event, the **Insurer** shall be reimbursed for all **Loss** paid in connection with such **Claim**; provided, however, that this exclusion shall not apply to the **Fraud/Dishonesty** Cover;
- Patent/Trade Secret* arising out of, based upon or attributable to the breach of licences concerning, infringement of or misappropriation of patents or **Trade Secrets**;
- Pollution* arising out of, based upon or attributable to:
- (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of **Pollutants**, or
 - (ii) any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or (b) respond to or assess the effects of **Pollutants**;

Exclusions (Continued)

<i>Prior Claims/Circumstance</i>	(i) made prior to or pending at the inception of this policy; or (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any Insured to give rise to a Claim ;
<i>Trade Debts</i>	arising out of, based upon or attributable to any: (i) trading debt incurred by an Insured or (ii) guarantee given by an Insured for a debt;
<i>U.S.A./Canada</i>	made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions; or
<i>War/Terrorism</i>	arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

Claims

<i>Notification of Claims</i>	The Insured shall, as a condition precedent to the obligations of the Insurer under this policy, give written notice to the Insurer of any Claim first made against the Insured as soon as practicable and during the Policy Period . All notifications must be in writing or by facsimile, and addressed as required in the Claims Notice Item on the Schedule.
<i>Related Claims</i>	If notice of a Claim against an Insured is given to the Insurer pursuant to the terms and conditions of this policy, then: (i) any subsequent Claim alleging, arising out of, based upon or attributable to the facts alleged in that previously notified Claim ; and (ii) any subsequent Claim alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in that previously notified Claim , shall be considered made against the Insured and reported to the Insurer at the time notice was first given. Any Claim or Claims arising out of, based upon or attributable to (i) the same cause, or (ii) a single Wrongful Act , or (iii) a series of continuous, repeated or related Wrongful Acts , shall be considered a single Claim for the purposes of this policy.
<i>Defence/Settlement</i>	The Insurer does not assume any duty to defend, and the Insured shall defend and contest any Claim made against them unless the Insurer , in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any Claim . If the Insurer does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the Insurer . The Insurer has the right at any time after notification of a Claim to make a payment to the Insured of the unpaid balance of the Limit of Liability , and upon making such payment, all obligations of the Insurer to the Insured under this policy, including, if any, those relating to defence, shall cease.
<i>Insurer's Consent</i>	As a condition precedent to cover under this policy, no Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any Defence Costs without the prior written consent of the Insurer . Only those settlements, judgments and Defence Costs consented to by the Insurer , and judgments resulting from Claims defended in accordance with this policy, shall be recoverable as Loss under this policy. The Insurer's consent shall not be unreasonably withheld, provided that the Insurer shall be entitled to exercise all of its rights under the policy.

Claims (Continued)

Insured's Consent

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

Cooperation

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

Allocation

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

Where the **Insurer's** liability under this policy is limited under this clause, the **Insured** and the **Insurer** must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.

Allocation Disputes

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

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

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

Fraudulent Claims

If any **Insured** shall give any notice or claim cover for any **Loss** under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under the policy, and the **Insurer** shall have the right to cancel the policy, as allowed by the *Insurance Contracts Act 1984* (Cth).

Purchase and Administration

<i>Policy Purchase</i>	In granting cover to the Insured , the Insurer has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. If the Insurer becomes entitled to avoid this policy from inception or from the time of any variation in cover, the Insurer may at its discretion maintain this policy in full force but exclude the consequences of and any Claim relating to any matter which ought to have been disclosed before inception or any variation in cover.
<i>Administration</i>	The Policyholder has acted and shall act on behalf of each and every Insured with respect to: (i) negotiating terms and conditions of, binding and amending cover; (ii) exercising rights of Insureds ; (iii) notices; (iv) Premiums ; (v) endorsements; (vi) dispute resolution; (vii) claims management and consent to defence/settlement; and (viii) payments to any Insured .

Limit and Retention

<i>Limit of Liability</i>	The total amount payable by the Insurer under this policy shall not exceed the Limit of Liability . Sublimits of Liability, Extensions and Defence Costs are part of that amount and are not payable in addition to the Limit of Liability . The Limit of Liability for the period provided in the Extended Reporting Period Extension is part of, and not in addition to, the Limit of Liability for the Policy Period . The inclusion of more than one Insured under this policy does not operate to increase the total amount payable by the Insurer under this policy.
<i>Retention</i>	The Insurer shall only pay for the amount of any Loss which is in excess of the Retention . For the avoidance of doubt, the Retention also applies to Defence Costs . The Retention is to be borne by the Insured and shall remain uninsured. A single Retention shall apply to Loss arising from all Claims alleging the same Wrongful Act .

General Provisions

<i>Assignment</i>	This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the Insurer .
<i>Cancellation</i>	
<i> By Policyholder:</i>	This policy may be cancelled by the Policyholder at any time only by mailing written prior notice to the Insurer or by surrender of this policy to the Insurer or its authorised agent. In such case, if no Claim has been made and no circumstance has been notified prior to such cancellation; the Insurer shall retain the customary short rate proportion (unexpired portion of Premium less handling charges) of the Premium . Otherwise, Premium shall not be returnable and shall be deemed fully earned at cancellation.
<i> By Insurer:</i>	This policy may be cancelled by the Insurer only as prescribed by the <i>Insurance Contracts Act 1984</i> (Cth). In such case, the Insurer shall be entitled to a <i>pro-rata</i> proportion of the Premium . Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
<i>Insolvency</i>	Insolvency, receivership or bankruptcy of any Insured shall not relieve the Insurer of any of its obligations hereunder.

General Provisions (Continued)

Plurals, Headings and Titles

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

Scope and Governing Law

Where legally permissible and subject to the U.S.A./Canada Exclusion, this policy shall apply to any **Claim** made against any **Insured** anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of Australia and in accordance with the English text as it appears in this policy.

Subrogation

If any payment is to be made under this policy in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for its actual loss. The **Insurer** shall be entitled to pursue and enforce such rights in the name of the **Insured**, who shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The **Insured** shall do nothing to prejudice these rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured** less the cost to the **Insurer** of such recovery. The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by serious or wilful misconduct of the **Employee** in the course of or arising out of the employment. In its sole discretion, the **Insurer** may, in writing, waive any of its rights set forth in this Subrogation Clause.

Validity

This policy is not binding upon the **Insurer** unless it is countersigned on the Schedule by an authorised representative of the **Insurer** or its general agent.