



Woodina

Underwriting Agency

**Design and Construction
Professional Indemnity Wording**

Section 1 Preamble

- 1.1 Subject to payment of the **Premium** or as agreed in writing, **We** agree to provide indemnity in accordance with and subject to the terms and conditions of the **Policy**.
- 1.2 Before this **Policy** commenced **We** received information provided on behalf of the **Insured** in the **Proposal** and in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this **Policy**.
- 1.3 Any word or expression to which a specific meaning has been attached shall bear that special meaning wherever they appear. If a word has a specific meaning it appears in the **Policy** in bold black type and with a capital letter. The meanings of these words can be found in Section 9 Definitions.

Section 2 Insuring Clause

- 2.1 **We** agree to indemnify the **Insured**, up to the **Limit of Indemnity**, against civil liability for compensation to any third party arising from any **Claim** as a result of the conduct of the **Insured's Professional Services** that:
 - i. is first made against the **Insured** during the **Period of Insurance**; and
 - ii. is notified to **Us** during the **Period of Insurance**; and
 - iii. arises from an act or omission after the **Retroactive Date**.
- 2.2 **We** also agree to pay **Costs and Expenses** incurred with **Our** written consent in the defence or settlement of any **Claim** indemnified by this **Policy**.

Section 3 Insuring Clause Clarification

For the purpose of clarifying the scope of cover under the Insuring Clause, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this **Policy**;

3.1 Defamation

We agree to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against the **Insured** arising from unintentional defamation.

3.2 Intellectual Property

We agree to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against the **Insured** for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

3.3 Misleading & Deceptive Conduct

We agree to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against the **Insured** under the terms of the Competition and Consumer Act 2010 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

3.4 Mitigation of loss costs

It is agreed that this **Policy** will cover the costs reasonably incurred with **our** consent, such consent not to be unreasonably withheld, in respect of:

- i. rectification of services performed; or
- ii. work undertaken

by the **Insured** to mitigate a **Claim** or potential **Claim** that would otherwise have been covered under this **Policy**.

If a third party refuses to pay for an amount due to the **Insured**, claimed by the **Insured** or required by the **Insured** to be paid to a third party and the basis for their refusal is likely to give rise to a **Claim** for an amount greater than the amount in dispute that would otherwise have been covered under this **Policy**, **We** may, at **Our** discretion, pay the disputed amount in order to mitigate the **Claim** against the **Insured**.

If **We** are required to pay an amount under this extension and that matter subsequently leads to a **Claim** against the **Insured** that would otherwise be covered by this **Policy**, **Our** maximum payment including any amount already paid under this clause shall not exceed the **Limit of Indemnity** specified in the **Schedule**.

3.5 Retroactive Date

- a) "Unlimited Retroactive Cover" – if no **Retroactive Date** is specified in the **Schedule** or if the **Retroactive Date** is specified in the **Schedule** as "Unlimited", this **Policy** shall provide indemnity in respect of **Claim** arising from acts errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- b) "Limited Retroactive Cover" – where a **Retroactive Date** is specified in the **Schedule**, then this **Policy** shall only provide indemnity in respect of **Claims** arising from acts, errors or omissions committed or alleged to have been committed after the

Retroactive Date.

Section 4 Automatic Extensions

We shall provide indemnity as is available under this Section, for no additional premium, provided always that:

- a) The indemnity provided by each **Policy** Extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **Deductible** and other terms of this **Policy** (unless otherwise expressly stated herein);
- b) The inclusion of any **Policy** extension shall not increase the **Limit of Indemnity**.

4.1 Continuous Cover

Where the **Insured**:

- i. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- ii. had not notified **Us** of such facts or circumstances prior to the **Period of Insurance**,

then Exclusion 5.18 (Prior or pending) will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such facts or circumstances, provided that;

- a) the **Insured's** failure to notify is not fraudulent; and
- b) the **Insured** has been continuously insured, without interruption at the time of notification of the **Claim** to **Us**, under a policy issued by **Woodina Underwriting Agency Pty Ltd**, and was insured by **Woodina Underwriting Agency Pty Ltd**, at the time the **Insured** first became aware of such facts or circumstances; and
- c) **We** may reduce their liability under the **Policy** to the extent of any prejudice **We** 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**; and
- d) the **Limit of Indemnity We** provide shall be the lesser available under the policy in force when the **Insured** first became aware of the facts or circumstances or under this **Policy**. The terms of this **Policy** otherwise apply.

4.2 Court Attendance Costs

We agree to provide up to \$250 per day for **Court Attendance Costs** incurred by **Employees** of the **Insured**, or up to \$500 per day for **Court Attendance Costs** incurred by partners,

principals or directors of the **Insured** if they are legally compelled to attend a civil proceeding as a witness in a **Claim** covered by this **Policy**.

Our total aggregate liability during any one **Period of Insurance** for all **Court Attendance Costs** shall not exceed \$50,000 and \$2,500 per day, and shall be part of and not in addition to the **Limit of Indemnity** as shown on the **Policy Schedule**.

4.3 Enquiry Costs

We will indemnify the **Insured** for **Enquiry Costs** provided that:

- i. notice requiring the **Insured's** response or attendance is first received by the **Insured** and is notified to **Us** during the **Period of Insurance**;
- ii. such response or attendance arises directly from conduct committed or allegedly committed by the **Insured** in the performance of the **Professional Services**;
- iii. such indemnity is subject to the written consent of **Us** prior to the incurring of the **Enquiry Costs**;
- iv. **We**; at **Our** discretion, are entitled to appoint legal representation to represent the **Insured** at the inquiry or hearing;
- v. regular or overtime wages, salaries or fees of the **Insured** are excluded from indemnity under this extension;
- vi. **Our** total aggregate liability during any one **Period of Insurance** in respect of **Enquiry Costs** made under this policy extension shall not exceed \$100,000 and shall be part of and not in addition to the **Limit of Indemnity** as shown in the **Policy Schedule**.

4.4 Fidelity

We agree to provide indemnity to the **Insured** against loss of **Money** belonging to the **Insured** or for which the **Insured** is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission in which an **Insured** participated. Provided always that:

- i. such loss is first discovered by the **Insured** during the **Period of Insurance** and is notified in writing to **Us** within the **Period of Insurance** and within twenty eight (28) days of the date of such discovery;
- ii. **We** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the **Insured** concerned;
- iii. **We** shall not be liable to indemnify any **Insured** who committed or condoned any

dishonest or fraudulent conduct in consequence of which the loss occurred;

- iv. the **Insured** shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and **We** will be under no obligation to provide indemnity to the **Insured** until such time as **We** are satisfied that such loss has, in fact, been sustained;
- v. **Our** liability for each loss under this extension and **Our** aggregate liability for all losses under this extension shall not exceed \$50,000 and shall be part of and not in addition to the **Limit of Indemnity** as shown in the **Policy Schedule**.
- vi. The **Deductible** specified in the **Policy Schedule** applies to any one event, events or series of events caused by acts or omissions of the same person or persons (whether identifiable or not) and events in which such person or persons is/are involved or implicated shall be treated as one event.

4.5 Fraud and Dishonesty

We agree to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against that **Insured**, which would otherwise be excluded by reason of Exclusion 5.9 (Fraud and dishonesty). Provided always that:

- i. such indemnity shall not be provided to any **Insured** who committed or condoned any act, error or omission excluded by reason of Exclusion 5.9 (Fraud and Dishonesty);
- ii. such indemnity shall not apply to any **Claim** against any **Insured** directly or indirectly based upon, attributable to, or in consequence of:
 - a) the loss of **Money**;
 - b) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of **Money** described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
 - c) a transaction, direction or dealing involving or in a way relating to a right to be paid **Money** or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such a right.

4.6 Joint Venture Liability

We agree to indemnify the **Insured** in respect of any **Claim** resulting from the **Insured's** participation in any joint venture in connection with the **Professional Services** provided that:

- i. the indemnity provided shall only related to the **Insured's** proportion of any liability by such joint venture; and
- ii. the **Insured's** income derived from participation in the joint venture has been included in the calculation of income furnished by the **Insured** in the **Proposal** form;
- iii. no cover is provided to the joint venture partner of the **Insured**.

4.7 Loss of Documents

We agree, in the event of loss or damage to **Documents**, to indemnify the **Insured** against all **Costs and Expenses** reasonably incurred by the **Insured** in replacing and restoring such documents provided that:

- i. such loss or damage is sustained during the **Period of Insurance** while the **Documents** are either in transit or in the custody of the **Insured** or any person to whom the **Insured** has entrusted them in the course of the normal conduct of the **Professional Services**;
- ii. where the **Documents** are in electronic format, the **Insured** or any person to whom the **Insured** has entrusted them, have in place sufficient and proper procedures for the security and daily back-up of the **Documents**;
- iii. the amount of any **Claim** for such **Costs and Expenses** shall be supported by bills and / or accounts which shall be subject to approval by **Us** or a competent person nominated by **Us**;

We shall not be liable for loss or damage to **Documents** caused by:

- a) riot or civil commotion
- b) fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause
- c) any computer virus
- d) interference with electronically stored **Data** by any person who is not a current principal, partner, director or **Employee** of the **Insured**.

4.8 Newly Created Subsidiary

We agree to include in the definition of **Insured** any **Subsidiary** created by the **Named Insured** during the **Period of Insurance** for a period of up to fourteen (14) days (but never beyond the expiry date of the period of cover) from the date of such creation.

Provided always that this policy extension will only apply in respect of **Claim** against the

Subsidiary arising from an act, error or omission occurring subsequent to the date of creation of the **Subsidiary**.

4.9 Run off Cover Insured Entity

We agree that in the event that an insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this **Policy** with respect to such insured entity shall continue until the expiry date of the **Period of Insurance**.

Provided always that such coverage shall only apply in respect of **Claim(s)** arising from an act, error or omission occurring prior to the effective date that such insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

4.10 Statutory Liability

Notwithstanding any existing exclusion in the **Policy** in respect of fines and penalties, the **Insurer** agrees under this extension to cover fines or penalties awarded against the **Insured** for any breach of occupational health and safety laws (OH&S) arising from the provision of the **Insured's Professional Services**, provided that;

- i. the **Insurer** is not legally prohibited at law from insuring such fine or penalty;
- ii. the fine or penalty does not arise from a reckless or grossly negligent act or omission or a wilful, intentional or deliberate violation of law by the **Insured**, as established by a Court judgement or other final adjudication;
- iii. **Our** liability for each loss under this extension and **Our** aggregate liability for all losses under this extension shall not exceed \$100,000 and shall be part of and not in addition to the **Limit of Indemnity** as shown in the **Policy Schedule**

4.11 Sub-Contractors acts

This **Policy** covers the **Insured** for any vicarious liability of the **Insured** in respect of any acts of a sub-contractor, sub-consultant or agent performing work pursuant to a contract with the **Insured**, where such work is performed as part of the **Insured's Professional Services** and under the **Insured's** direct supervision and control, provided that this **Policy** will not cover the subcontractor, subconsultant or agent.

Section 5 Exclusions

We shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against any **Insured**:

5.1 Asbestos

directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.

5.2 Bodily Injury and Property Damage

directly or indirectly based upon, attributable to, or in consequence of **Bodily Injury** or **Property Damage** unless such injury or damage arises directly out of any breach or a professional duty owed by the **Insured** arising from the provision of **Professional Services**.

5.3 Contractual Liability

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an **Insured** by way of contract, warranty, guarantee, indemnity, or liquidated damages to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract, warranty, guarantee, indemnity or liquidated damages.

5.4 Cyber and Data

- i. directly or indirectly based upon, attributable to, or in consequence of any actual or alleged loss, damage, liability, **Claim**, fine, penalty, cost (including, but not limited to, defence cost and mitigation cost) or expense of whatsoever resulting from:
 - a) a **Cyber Incident**, unless subject to the provisions of paragraph iii;
 - b) a **Cyber Act**; or
 - c) a breach of **Data Protection Law** by the **Insured**, or parties acting for the **Insured**, involving access to, processing of, use of or operation of any **Computer System** or **Data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.
- ii. Any cover for the costs of reconstituting or recovering lost or damaged **Documents** owned or controlled by the **Insured** in this **Policy** shall not apply to **Data**.
- iii. Subject to all the terms, conditions, limitations and exclusions of this **Policy** or any endorsement thereto, sub-paragraph i.a) shall not apply to any otherwise covered **Claim** arising out of any actual or alleged breach of **Professional Services** by the **Insured** involving access to, processing of, use of or operation of any **Computer System** or **Data** unless such actual or alleged breach of **Professional Services** by the **Insured** is caused by, contributed to by, resulting from, arising out of or in connection with a **Cyber Act**.

5.5 Cyber Fraud

directly or indirectly based upon, attributable to, or in consequence of the theft of **Money** through the use, operation or manipulation of any **Computer Systems** or software, including inducing the **Insured** or any other party of a change in a recipient's bank account details, or otherwise fraudulently having the **Insured** or any other party effect an incorrect payment of **Money**.

5.6 Deregistration

directly or indirectly based upon, attributable to, or in consequence of in so far as the **Insured** is required by law to maintain a statutory registration in order to be entitled to practice or provide the **Professional Services, Claims** arising from acts, errors or omissions by or on behalf of the **Insured** subsequent to the suspension or cancellation of such registration.

5.7 Finance

directly or indirectly based upon, attributable to, or in consequence of;

- i. the failure of the **Insured** to arrange and / or maintain insurance and / or finance; or
- ii. any actual or alleged advice in relation to insurance, finance, accounting or tax matters.

5.8 Fines and Penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limited to, civil penalties.

5.9 Fraud and Dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

- i. any actual or alleged dishonest, fraudulent, criminal or malicious act or omission of an **Insured** or their consultants, sub-contractors or agents; or
- ii. any act or omission of an **Insured** or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- iii. any wilful breach of any statute, contract or duty by an **Insured** or their consultants, sub-contractors or agents.

5.10 Insolvency

directly or indirectly based upon, attributable to, or in consequence of;

- i. the **Insured's** insolvency, bankruptcy or liquidation.
- ii. the insolvency, bankruptcy or liquidation of any party involved in the project.

5.11 Inspections

directly or indirectly based upon, attributable to, or in consequence of any pest, pool or pre purchase property inspection or the provision of any pest, pool or pre purchase property inspection report, whether verbal or oral.

5.12 Investment Advice

directly or indirectly based upon, attributable to, or in consequence of any investment advice or information or opinion regarding investment (including allegations of or in connection with the failure of the **Insured** to provide advice or information) provided by or on behalf of the **Insured**.

5.13 Jurisdictional Limits

- i. brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- ii. arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

5.14 Manufacture, Products and Workmanship

directly or indirectly arising from any defect or alleged defect to anything manufactured, supplied, sold, installed, fabricated, assembled, erected, treated, serviced, repaired or maintained by the **Insured**, or arising from any fitness for purpose obligation in relation to workmanship, materials or any product, provided that this exclusion shall not apply where the liability also arises from a breach of duty in the performance of the **Insured's Professional Services**.

5.15 Nuclear

directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of any nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

5.16 Other Insurances

directly or indirectly based upon, attributable to, or in consequence of:

- i. the **Insured's** liability as an employer; or
- ii. actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant; or
- iii. the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body; or
- iv. the occupation of land or buildings by an **Insured**; or
- v. the **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

5.17 Pollution

directly or indirectly based upon, attributable to, or in consequence of the actual or threatened discharge, dispersal, seepage, release or escape of any **Pollutant** into or onto real or personal property, water or the atmosphere.

5.18 Prior or Pending

- i. made, threatened or intimidated against an **Insured** prior to the **Period of Insurance**;
or
- ii. directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance;
 - a) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - b) of which an **Insured** first became aware prior to the **Period of Insurance**, and which such **Insured** knew or ought reasonably to have known had potential to give rise to a **Claim** under this **Policy**.

5.19 Related or Associated Entities

brought or maintained by or on behalf of:

- i. an **Insured** or any **Subsidiary** or parent of an **Insured**; or
- ii. any person who, at the time of the act, error or omission giving rise to the **Claim** is a **Family Member** or company owned or controlled by a **Family Member** unless such person or company is acting without any prior direct or indirect solicitation or co-operation of an **Insured**.
- iii. any company or trust which is operated or controlled by the **Insured** or its nominees

or trustees and which an **Insured** has a direct financial interest.

5.20 Retroactive Date

arising from work performed prior to the **Retroactive Date** specified in the **Schedule**.

5.21 Territorial Limits

directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

5.22 Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of **Terrorism** or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of **Terrorism**.

This exclusion operates in connection with any act of **Terrorism** regardless of any other cause or event and regardless of the sequence of the act of **Terrorism** and the other cause or event.

5.23 Trading Debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an **Insured** or any guarantee given by an **Insured** for a debt.

5.24 Valuation

directly or indirectly based upon, attributable to, or in consequence of any valuation provided by or on behalf of the **Insured**.

5.25 War

directly or indirectly based upon, attributable to, 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 of or damage to property by or under the order of any government, public or local authority.

Section 6 Claims conditions

6.1 Claims Notification

The **Insured** shall, as soon as practicable and prior to expiry of the **Period of Insurance**, give **Us** written notice of any **Claim** made against the **Insured**. Furthermore every letter, demand,

writ summons and legal process pertaining to such **Claim** shall be forwarded to **Us** as soon as practicable after receipt.

All **Claim** notifications should be forwarded to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001

Or Email: claims@woodina.com.au

It is the **Insured's** responsibility to ensure such notification has been forwarded to and received by **Woodina Underwriting Agency Pty Ltd**.

6.2 Claims Mitigation and Co-operation

- i. If the **Insured**, either prior to or during the **Period of Insurance** becomes aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, the **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- ii. The **Insured** shall frankly and honestly disclose to **Us** all relevant information and, in addition shall provide assistance to **Us**, as **We** may require to enable **Us** to investigate and to defend any **Claim** under this **Policy** or to enable **Us** to determine **Our** liability under this **Policy**.
- iii. Other than **Costs and Expenses** incurred by **Us** to enable **Us** to determine our liability under this **Policy**, compliance with this condition shall be at the **Insured's** own cost, unless otherwise agreed to in writing by **Us**.

6.3 Claims Conduct

- i. **We** 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**.
- ii. The **Insured** agrees not to settle any **Claim**, incur any **Costs and Expenses** or **Court Attendance Costs, Enquiry Costs**, any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **Our** written consent, such consent not to be unreasonably withheld. **We** shall not be liable for any settlement, **Costs and Expenses, Court Attendance Costs, Enquiry Costs**, admission, offer or payment, or assumed obligation to which they have not consented in writing.
- iii. **We** may, if **We** believe that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situation, **We** will reimburse the **Insured** for all reasonable **Costs and Expenses** in the defence of the **Claim** in the

event that any payment made to dispose of the **Claim** exceeds the **Deductible**.

6.4 Multiple 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 one **Claim** for the purpose of this **Policy**.

6.5 Right to Contest

In the event that **We** recommend a settlement in respect of a **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**. Provided always that **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Costs and Expenses** incurred with **Our** written consent up to the date of such election, less the **Deductible**.

6.6 Senior Counsel

- i. **We** and the **Insured** shall not be required to contest any legal proceedings unless a **Senior Counsel**, to be mutually agreed upon by **Us** and the **Insured**, shall advise that such proceedings should be contested. Failing agreement for the appointment, the **Senior Counsel** is to be appointed by the President of the Queensland Bar Association.
- ii. In formulating such advice, the **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Costs and Expenses** and the prospects of the **Insured** successfully defending the **Claim**.
- iii. The cost of such **Senior Counsel's** opinion shall be regarded as part of the **Costs and Expenses**.

6.7 Subrogation

- i. If any payment is made under this **Policy** **We** are subrogated to the **Insured's** right of recovery and the **Insured** must assist and provide such information as **We** reasonably require to exercise such rights.
- ii. **We** agree not to exercise any such rights against any director, principal or **Employee** of the **Insured** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, principal or **Employee**.
- iii. The **Insured** shall not without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the **Insured** may have in respect of any **Claim** covered by this **Policy**.

Section 7 General Conditions

7.1 Alteration to Risk

The **Insured** must notify **Us** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **We** are entitled to amend the terms of the **Policy** and / or charge an additional premium based on **Our** assessment of any change in the risk insured by this **Policy**.

A material change in the risk shall include, but is not limited to:

- i. an **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- ii. any material change to the nature of the **Professional Services** offered by the **Insured**;
- iii. any material change in the **Insured's** business.

7.2 Assignment

This **Policy** cannot be assigned by the **Insured** without **Our** written consent.

7.3 Cancellation

- i. The **Insured** may cancel this **Policy** at any time in writing to **Us**. Upon receipt of such request **We** will retain a short period premium calculated at the pro rata portion of the annual premium for the time they have been on risk plus ten percent (10%), subject to a minimum retained premium of \$500, and the **Insured** shall receive a refund of any balance of the **Premium** actually paid.
- ii. **We** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.
- iii. If there has been any **Claims** made under the **Policy** no refund shall be given.

7.4 Deductible

We shall only be liable for that part of each and every **Claim** (which includes all **Costs and Expenses** incurred) which exceeds the amount of the **Deductible** as specified in the **Schedule** subject at all times to the **Limit of Indemnity** specified in the **Schedule**.

The **Deductible** shall be borne by the **Insured** at their own risk. Where the **Deductible** is specified to be inclusive of **Costs and Expenses**, the **Insured** shall pay the **Costs and Expenses** as they are incurred, up to the amount of the **Deductible**. Where the **Deductible** is specified

to be exclusive of **Costs and Expenses**, the **Deductible** shall not apply to the **Costs and Expenses** incurred.

If any expenditure is incurred by **Us** which by virtue of this clause is the responsibility of the **Insured** then such amount shall be reimbursed to **Us** by the **Insured** forthwith.

7.5 Governing Law

This **Policy** is governed by the law of the territory or State where the **Policy** was issued, which is stated in the **Schedule**. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

7.6 GST Basis of Settlement

- i. Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** is, or will be, entitled to under a New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- ii. Where payment is made under the **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** would have been entitled to under a New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

7.7 Interpretation

In this **Policy**;

- i. the single includes the plural and the masculine includes the feminine and vice versa;
- ii. the titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

7.8 Limit of Indemnity

- i. **Our** total liability for any one **Claim**, including **Costs and Expenses**, will not exceed the **Limit of Liability** specified in the **Schedule**, and **Our** total liability in the aggregate in respect of all **Claims**, including **Costs and Expenses**, during the **Period of Insurance**, will not exceed the **Aggregate Limit of Indemnity** specified in the **Schedule**.
- ii. This clause does not increase any sub-limit in the **Policy**.

7.9 Other Insurance

If at the time any **Claim** arises under the **Policy** there is any other insurance in force covering the same liability the **Insured** shall promptly provide **Us** full details of such other insurance, including the identity of the insurer, the policy number and such further information as **We** may reasonably require.

7.10 Reinstatement of the Limit of Indemnity

If the **Limit of Indemnity** is either partially or totally exhausted by the payment of a **Claim** under this **Policy**, **We** agree to reinstate the Limit of Indemnity by an amount equal to the **Limit of Indemnity** (or a multiple of such **Limit of Indemnity** if there is more than one reinstatement under the **Policy**) provided that:

- a) **Our** total liability in respect of all **Claims** under this **Policy** shall not exceed the **Limit of Indemnity** as specified in the **Schedule**;
- b) such reinstatement is only available for subsequent **Claims** totally unrelated to those that give rise to the partial or total exhaustion of the **Limit of Indemnity**.

7.11 Sanctions

We shall not provide cover and **We** shall not be liability to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United States resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

7.12 Severability and Non-Imputation

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

- i. comply with the duty of disclosure under the Insurance Contracts Act 1984;
 - ii. comply with any obligation under this **Policy** (other than the obligation to pay premium);
- or
- iii. refrain from conduct which is dishonest, fraudulent, criminal or malicious,

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

- i. be entirely innocent of and have no prior knowledge of any such failure; and

- ii. as soon as practicable after becoming aware of any such failure, advise **Us** in writing of all its relevant circumstances.

7.13 Several Liability

The subscribing insurers' 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 insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

7.14 Variation of the Policy

No variation of this **Policy** will be effective, unless made by **Endorsement** which is signed by a properly authorised employee of **Woodina Underwriting Agency Pty Ltd**.

Section 8 Definitions

8.1 Aggregate Limit of Indemnity

shall mean the amount shown as the **Aggregate Limit of Indemnity** in the **Schedule**.

8.2 Bodily Injury

shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

8.3 Claim

shall mean:

- i. The receipt by the **Insured** of any demand for compensation made by a third party against the **Insured**.
- ii. Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured** which contains a demand for compensation made by a third party against the **Insured**.

8.4 Computer System

shall mean any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and

including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

8.5 Costs and Expenses

shall mean the reasonable legal costs and other expenses incurred by or on behalf of the **Insured** or by **Us** in the investigation defence or settlement of a **Claim**.

8.6 Court Attendance Costs

shall mean the reasonable costs incurred by the **Insured** in attending a civil proceeding as a witness in a **Claim**. These costs shall include, but not be limited to travel expenses, locum expenses, meals, and accommodation.

8.7 Cyber Act

shall mean an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

8.8 Cyber Incident

Shall mean:

- i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- ii) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

8.9 Data

shall mean information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

8.10 Data Protection Law

shall mean all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

8.11 Deductible

shall mean the amount shown as the **Deductible** in the **Schedule**. The **Deductible** applies to all amounts payable under this **Policy** including the indemnity provided under Clause 2.2 (**Costs and Expenses**).

8.12 Documents

shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include **Money**.

8.13 Employee

shall mean any person employed under a contract of service or apprenticeship with the **Insured** during or prior to commencement of the **Period of Insurance**.

8.14 Enquiry Costs

shall mean the necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice from an inquiring body requiring a response from the **Insured** or requiring the **Insured's** attendance at an investigation, inquiry or hearing before the inquiring body.

8.15 Family Member

shall mean:

- i. any spouse, domestic partner, or companion;
- ii. any parent, or parent of the spouse, domestic partner or companion;
- iii. any sibling or child;

of an **Insured**.

8.16 Insured

shall mean:

- i. the **Named Insured**;
- ii. any person who is, during the **Period of Insurance**, a principal, partner or director of the **Named Insured** but only in respect of work performed while a principal, partner or director of the **Named Insured**;

- iii. any person who is, during the **Period of Insurance**, an **Employee** of the **Named Insured** but only in respect of work performed while an **Employee** of the **Named Insured**; or
- iv. any former principal, partner, director or **Employee** of the **Named Insured**, but only in respect of work performed while a principal, partner, director or **Employee** of the **Named Insured**.
- v. any **Subsidiary** of the **Named Insured** named in the **Proposal**;
- vi. the estate, heirs, legal representatives or assigns of an **Insured** in the event of the death or incapacity of that **Insured**.

8.17 Limit of Indemnity

shall mean the limit of **Our** liability under this **Policy** as specified in the **Schedule**.

8.18 Named Insured

shall mean the person, persons, partnership, company, corporation or other entity specified as the **Named Insured** in the **Schedule**.

8.19 Period of Insurance

shall mean the period specified in the **Schedule**.

8.20 Policy

shall mean:

- i. the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- ii. any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Insurance**; and
- iii. the **Proposal**

8.21 Pollutant

shall mean:

- i. any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- ii. any waste materials including materials recycled, reconditioned or reclaimed; or

- iii. any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

8.22 Premium

shall mean the **Premium** specified in the **Schedule** or in any endorsement to the **Schedule**.

8.23 Professional Services

shall mean the profession, as specified in the **Schedule**, which is conducted by the **Named Insured**. If the **Named Insured** should change its name and there is no other change which materially alters the risk, the **Insured's** profession will continue to be covered by this **Policy**.

8.24 Property Damage

shall mean damage to or loss or destruction of tangible property or loss of use thereof.

8.25 Proposal

shall mean the **Proposal** made by the **Insured** to **Us** containing particulars and statements which, together with other information provided by the **Insured**, are the basis of the **Policy** and are considered as incorporated herein.

8.26 Retroactive Date

shall mean the **Retroactive Date** shown in the **Schedule**.

8.27 Schedule

shall mean the **Schedule** to this **Policy**.

8.28 Senior Counsel

shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

8.29 Subsidiary

shall mean:

- i. any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the **Named Insured** specified in the **Schedule**; or
- ii. any entity over which a **Named Insured** is in a position to exercise effective direction or control.

8.30 Terrorism

shall mean an act, including but not limited to the use of force or violence or the threat thereof, of any person or group of persons, or government, which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government or to put the public, or any section of the public, in fear.

8.31 We or Us or Our

shall mean certain underwriters at Lloyd's through their coverholder **Woodina Underwriting Agency Pty Ltd**.

8.32 Woodina Underwriting Agency Pty Ltd

shall mean **Woodina Underwriting Agency Pty Ltd** ABN 24 151 854 698

Notices

The information contained in this section is general information only and does not form part of your contract with us.

Your 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 which 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 us before you renew, extend, vary or reinstate a contract of insurance.

You have this duty until we agree to insure you.

Your duty however does not require disclosure of a matter:-

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

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from the beginning.

Claims Made Policy

This policy is a claims made policy of insurance. This means that the policy covers you for claims made against you and notified to the Insurer during the period of insurance. The policy does not provide cover in relation to:

- events that occurred prior to the retroactive date, if any, specified in the policy;
- claims notified or arising out of circumstances notified under any previous policy (whether made or issued by the insurer or any other insurer);
- claims made against you prior to commencement of the period of insurance;
- claims arising out of claims and circumstances noted on the proposal form for the current period of insurance or on any previous proposal form;
- subject to what is said in the next paragraph, claims made after expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance.

However, where you give notice in writing to the insurer of facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before expiry of the period of insurance, the policy will, subject to its terms and conditions, cover you notwithstanding that a claim is only made after expiry of the period of insurance.

Privacy

Woodina Underwriting is committed to protecting the privacy of the personal information you provide us. Woodina Underwriting collects, uses and retains your personal information in accordance with the National Privacy Principles.

We need to collect the personal information on the applicable proposal form to consider your application for insurance and to determine the premium (if your application is accepted) when you are applying for, changing or renewing an insurance policy with us. This information will also be used if you lodge a claim under your policy. We may also need to request additional information from you in connection with your application or a claim. If you do not provide us with this information, or any additional information we request, we may not be able to process your application or offer you insurance cover or respond to any claim.

We may disclose the personal information we collect:

- To our relevant employees involved in delivering our services;
- If your insurance broker collects this form from you, to that broker;
- To facilitators such as legal firms, professional experts such as accountants, actuaries, engineers and technology experts;
- To the insurance companies with whom we transact business;
- To the Lloyd's Syndicates we represent (which are located in the United Kingdom);
- To insurance reference bureau or credit reference bureau;
- To reinsurers or reinsurance brokers (which may include reinsurers located outside of

Australia).

Where we do disclose the information as above the recipient may hold the information in accordance with its own privacy statement / policies. Those may include, by way of example, disclosing the information to and storage of that information by its associated entities which may be located overseas. We may also be required to provide your personal information to others for purposes of public safety and law enforcement and if required by law or by a law enforcement body to do so.

You may request access to your personal information, and where necessary, correct any errors in this information (some restrictions and costs may apply). If you would like to access a copy of your personal information or you wish to correct or update your personal information, please also contact us on (07) 3222 9400.

By completing and returning a proposal form or providing us with any additional information in connection with your application, you agree to us using and disclosing your information as set out above. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

From time to time, we may use your personal information to send you details of new insurance products or other insurance related information that may be of interest to you. If you do not wish to receive such information, please advise us on (07) 3222 9400.

Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints Procedures

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact in the first instance:

Complaints Officer
Woodina Underwriting Agency Pty Ltd
Post: GPO Box 3313
Brisbane Qld 4001
Email: info@woodina.com.au
Telephone: (07) 3222 9400

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Post: Suite 1603, Level 16, 1 Macquarie Place,
Sydney NSW 2000
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Australian Financial Complaints Authority
Post: GPO Box 3
Melbourne VIC 3001
Email: info@afca.org.au
Website: www.afca.org.au
Telephone: 1800 931 678

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia
Suite 1603, Level 16, 1 Macquarie Place
Sydney NSW 2000*

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance notice should be given as soon as practicable to:

The Claims Manager
Woodina Underwriting Agency Pty Ltd
GPO Box 3313
Brisbane Qld 4001
Or Email: claims@woodina.com.au