

Professional Indemnity Policy

1. INSURING CLAUSES

Subject to the terms of this Policy, the Underwriters will:

- 1.1 Pay to or on behalf of the Insured all the sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim(s) both first made against the Insured and notified to the Underwriters during the Period of Insurance arising from an actual or alleged breach of professional duty by the Insured as a result of a cause, happening on or after the Retroactive Date in connection with the Insured's Business.
- 1.2 Pay the Costs and Expenses incurred by the Insured, with the Underwriters' written consent, in defence or settlement of any Claim covered by this Policy.
- 1.3 Pay the Costs and Expenses necessarily incurred, with the Underwriters' prior written consent, in respect of measures taken by the Insured with the object of avoiding or mitigating a Claim for which the Insured would be entitled to indemnity under this Policy had such measures not been taken.

2. EXTENSIONS

The following Extensions are included automatically in this Policy for nil additional Premium provided always that each Extension is subject to the terms and conditions, Excess and Limit of Indemnity of this Policy. The inclusion of these Extensions does not increase the Limit of Indemnity of the Policy.

2.1 Acquired or Newly Created Subsidiaries

Underwriters agree to provide indemnity to the Insured in respect of any subsidiary or entity, which is created or acquired by the Insured as named in the Schedule provided always:

- 2.1.1 Such indemnity shall only apply in respect to any act, error or omission actually or allegedly occurring subsequent to the date of creation or acquisition by the Insured;
- 2.1.2 Indemnity under this Extension 2.1 is only valid for sixty (60) days after such creation or acquisition;
- 2.1.3 Notification shall be given in writing to Underwriters within sixty (60) days after such creation or acquisition;
- 2.1.4 Underwriters may at their absolute discretion provide cover for such subsidiary or entity created or acquired subject to additional Premiums and/or conditions; and
- 2.1.5 Indemnity shall only be provided in respect to any Claim arising from the Insured's Business.

2.2 Consultants and Sub-contractors (Vicarious Liability for the Insured)

Underwriters agree to provide indemnity to the Insured for any Claim arising from any act, error or omission committed or alleged to have been committed in the conduct of the Insured's Business by any consultant, sub-contractor or agent for whose acts, error or omissions the Insured is legally liable provided always that no indemnity shall extend to any consultant, sub-contractor or agent, unless this Policy is specifically endorsed otherwise.

2.3 Defamation, Libel and Slander

Underwriters agree to provide indemnity to the Insured for any Claim for defamation, libel or slander by reason of words written or spoken by the Insured in the conduct of the Insured's Business.

2.4 Dishonesty and Fraud

Notwithstanding Exclusion 6.30 Underwriters agree to provide indemnity to the Insured for any Claim arising out of any dishonest, fraudulent, criminal or malicious acts or omissions of an Employee of the Insured in the conduct of the Insured's Business provided always that:

- 2.4.1 No indemnity shall be provided to any person committing or condoning any act or omission;
- 2.4.2 The Insured shall take all reasonable steps requested by Underwriters to recover the loss;
- 2.4.3 The Insured shall permit Underwriters to take such recovery action in the name of the Insured and the Insured shall assist and co-operate with Underwriters and shall provide Underwriters with such information (including signed statements) as Underwriters may reasonably require;
- 2.4.4 The Excess applicable to this Extension 2.4 shall be AUD 10,000 each and every Claim or 10% of the Claim (whichever is the greater); and
- 2.4.5 This Extension 2.4 shall not apply to any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

2.5 Enquiry Costs and Expenses

Underwriters agree to provide indemnity to the Insured for any Costs and Expenses incurred with Underwriters prior written consent for the preparing for, attending at and representation of the Insured at any disciplinary proceeding, enquiry, coronial enquiry, Royal Commission or government enquiry held by a court, tribunal, judicial body or legally constituted industry or professional body provided always that:

- 2.5.1 The notice requiring the Insured to attend the enquiry is first served upon the Insured and reported to the Underwriters during Period of Insurance;
- 2.5.2 Any indemnity provided under this Extension 2.5 shall not exceed AUD 100,000 in the aggregate during the Period of Insurance, and
- 2.5.3 The Excess applicable to this Extension 2.5 shall be AUD 2,500 each and every Claim, unless the Schedule specifically states otherwise.

2.6 Estates, Heirs and Legal Representatives

Underwriters agree to provide indemnity to the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured provided always that such persons shall observe and be subject to all the terms and conditions of this Policy.

2.7 Continuous Cover (Loyalty Protection)

If the Insured was aware of any facts that could give rise to a Claim prior to the Period of Insurance and had not notified Underwriters of such facts prior to the commencement of the Period of Insurance, then Exclusions 6.5.1 and 6.5.4 under Prior or Pending Claims will not apply to the notification of a Claim resulting from such facts, provided that:

- 2.7.1 The failure to notify such facts was not a result of fraudulent misrepresentation or fraudulent non-disclosure by the Insured;
- 2.7.2 The Underwriters of this Policy are the same Underwriters of the professional indemnity insurance Policy when the Insured first became aware of such facts and circumstances;
- 2.7.3 The limit of liability, sub-limits of liability and excesses and any other terms and conditions of the policy in force when the Insured first became aware of such facts shall apply to this Policy;
- 2.7.4 Underwriters will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim prior to the Period of Insurance.

For the purpose of this Extension 2.7, Definition 3.11 Period of Insurance shall mean the period stated in the Schedule or otherwise agreed.

2.8 Intellectual Property

Underwriters agree to provide indemnity to the Insured for any Claim of actual or alleged infringement in copyrights, trademarks, trade secrets, broadcasting rights, domain names, metatags, registered designs or patents, plagiarism or breach of any confidentiality or breach of any other intellectual property right provided always such Claim arises in the conduct of the Insured's Business as stated in the Schedule.

2.9 Joint Venture (Protection for the Insured)

Underwriters agree to provide indemnity to the Insured for any Claim of actual or alleged breach of professional duty by the Insured arising from the Insured's Business in their capacity as a joint venture partner.

Furthermore, Underwriters will only pay Costs and Expenses incurred by the Insured in respect of such Claim in respect of its own liability as a joint venture partner.

This Policy will not provide indemnity to the other joint venture partner, unless this Policy is specifically endorsed otherwise.

2.10 Loss of Documents

Underwriters agree to provide indemnity to the Insured for any Claim arising from the loss of any Documents which have been destroyed, damaged, lost or mislaid and after diligent search cannot be found provided always that:

- 2.10.1 Such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring (whichever is the lesser) such Documents and any Claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by Underwriters with the approval of the Insured;

- 2.10.2 Such indemnity shall be limited to the loss of any Documents which were in the physical care, custody and/or control of the Insured or any other person to or with whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business;
- 2.10.3 No indemnity shall be provided for any loss arising from the normal wear and tear and other gradually operating causes;
- 2.10.4 Any indemnity provided under this Extension 2.10 shall not exceed AUD 250,000 in the aggregate including all costs, charges and expenses as described in sub-clause 2.10.1; and
- 2.10.5 The Excess applicable to this Extension 2.10 shall be AUD 2,500 each and every claim, unless the Schedule specifically states otherwise.

2.11 Non-Imputation and Severability of Proposal

Underwriters agree that any failure by any Insured to comply with:

- 2.11.1 The duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to the Underwriter shall not prejudice the right of any other Insured to indemnity under this Policy; and/or
- 2.11.2 Any terms and conditions of this Policy shall not prejudice the right of any other Insured to cover under this Policy

Underwriters shall only provide indemnity to any Insured who is innocent of and has no prior knowledge of such conduct. Should any Insured become aware of any such conduct, then that Insured shall as soon as practicable after becoming aware of such conduct, advise the Underwriters in writing of all relevant facts.

2.12 Principal's Indemnity

The indemnity granted by this Policy will extend to any principal in respect of the liability of such principal to third parties arising out of the performance by the Insured of any written contract or agreement with the Insured for the performance of work for such principal but this Policy shall only indemnify the principal to the extent that the Insured is required to insure such liability pursuant to such written contract or agreement, but subject always to the terms of this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy (insofar as they can apply) as though they were the Insured.

For the avoidance of doubt the principal may still be able to claim against the Insured in its own right.

Furthermore, for the avoidance of doubt, Underwriters will provide indemnity to the Insured and to the principal each in the same manner.

2.13 Reinstatement of Limit

Underwriters agree to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity provided always that:

- 2.13.1 Indemnity under this Policy shall not exceed the Limit of Indemnity as stated in the Schedule for any one Claim or series of Claims arising from the same acts, errors or omissions;

2.13.2 In the aggregate, indemnity shall not exceed an amount equal to twice the Limit of Indemnity as stated in the Schedule; and

2.13.3 Where there is additional insurance in place in excess of the Limit of Indemnity of this Policy, any indemnity under this Extension 2.13 is limited to the sums which are not covered by the additional insurance.

This Extension 2.13 does not apply to any indemnity sub limit provided under an Extension in this Policy or endorsement to this Policy.

2.14 Trading Ceases or Insured is Acquired or Sold (Automatic Run-off to Expiry)

If the Insured is acquired, purchased, or taken over by a third party or ceases trading during the Period of Insurance, then this Policy shall remain valid should any Claim be reported during the Period of Insurance provided always that indemnity will be limited to the Insureds named in this Policy.

2.15 Consumer Law

Underwriters agree to provide indemnity to the Insured for any Claim made for any unintentional breach of the Competition and Consumer Act 2010 or similar legislation enacted by the states or territories of the Commonwealth of Australia or Dominion of New Zealand (but not for criminal liability in respect of any of these) provided always that such Claim arises in the conduct of the Insured's Business as stated in the Schedule.

2.16 Breach Of Fiduciary Duty

Underwriters agree to indemnify the Insured for any Claim for a breach of fiduciary duty owed by the Insured to a client or customer of the Insured.

Provided always that there is no indemnity under this Extension for:

2.16.1 Any activities as a trustee, director, secretary or officer of any trust or body corporate unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer; or

2.16.2 Any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any Insured or their consultants, subcontractors or agents; or

2.16.3 Any act or omission of any Insured or their consultants, subcontractors or agents committed or alleged to have been committed with reckless disregard for the consequences thereof; or

2.16.4 Wilful breach of any statute, contract or duty by any Insured or their consultants, subcontractors or agents.

3. DEFINITIONS

3.1 Claim

"Claim" or "Claims" means:

3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice issued against or served on the Insured, or

3.1.2 Any written or oral demand for compensation received by the Insured which might result in a claim against the Insured.

3.2 Costs and Expenses

“Costs and Expenses” means all costs, charges, fees and expenses incurred by or on behalf of the Insured or Underwriters in the investigation, defence or settlement of a Claim and shall include legal costs, legal counsel’s fees, expert’s fees and disbursements that are a Claim under this Policy with the prior written consent of the Underwriter. Provided always that this Definition 3.2 does not include any wages, salaries or fees of the Insured.

3.3 Damage

“Damage” is loss, damage or destruction of any real or personal property, including any resulting or consequential loss from such loss, damage or destruction.

3.4 Documents

“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 electronically stored data but shall not include money, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

3.5 Employee

“Employee” shall mean any person employed under a contract of service or apprenticeship during or prior to the commencement of the Period of Insurance.

3.6 Excess

“Excess” is the amount of the Excess as stated in the Schedule or Policy or otherwise endorsed.

3.7 Injury

“Injury” means death, bodily injury, sickness, disease, illness, disorder, disability, emotional distress, shock, fright, mental anguish, mental injury, vexation or anxiety to any person, including loss of consortium or services resulting therefrom.

3.8 Insured

“Insured” wherever used in this Policy means:

- 3.8.1 The Insured, firm, partnership, company or individual named in the Schedule and their Employees;
- 3.8.2 Any individual who is, has been, or may become during the Period of Insurance a director, partner, principal or Employee of a named Insured in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;
- 3.8.3 Any former director, partner, principal or Employee of the named Insured including any such former director, partner, principal or Employee whilst acting as a consultant of the named Insured in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;
- 3.8.4 Any person who is or has been under a contract of service with the named Insured in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;

- 3.8.5 Any predecessor in business of the named Insured in the Schedule, but only to the extent of the liability attaching to the firm, partnership or company named in the Schedule;
- 3.8.6 Any subsidiary company (including subsidiaries thereof) of the Insured; and
- 3.8.7 Any other entity controlled by the Insured and over which the Insured assumes active management.

3.9 Insured's Business

"Insured's Business" means the professional business services shown in the Schedule.

3.10 Limit of Indemnity

"Limit of Indemnity" means the limit of liability Underwriter's must pay for compensation under this Policy.

The total aggregate liability of the Underwriters for all claims during any one Period of Insurance shall not exceed the sum stated in the Schedule.

This clause can be modified by endorsement.

3.11 Period of Insurance

"Period of Insurance" is the period stated in the Schedule or otherwise agreed, provided always that the Period of Insurance at inception of this Policy is nine (9) months or more.

3.12 Policy

"Policy" shall mean:

- 3.12.1 The Schedule, Insuring Clauses, Extensions, Definitions, Exclusions, Conditions and other terms and conditions herein;
- 3.12.2 Any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
- 3.12.3 The Proposal.

3.13 Premium

"Premium" is the amount the Underwriters shall charge for insurance under this Policy for a Period of Insurance.

3.14 Proposal

"Proposal" shall mean the written Proposal form submitted to Underwriters containing particulars and statements (together with any other written information which may have been supplied in conjunction therewith) bearing the date as stated in the Schedule.

3.15 Retroactive Date

"Retroactive Date" is the date stated in the Schedule.

3.16 Schedule

“Schedule” is the schedule to this Policy.

3.17 Underwriters

“Underwriters” shall mean certain Underwriters at Lloyd’s, each of whom (including their executors and administrators) is only liable for their share of any Claim, loss, liability Costs and Expenses payable under this Policy provided always that General Condition 4.9 shall prevail. The sum of all shares supported by certain Underwriters at Lloyds will total one hundred percent (100%).

4. GENERAL CONDITIONS

4.1 Policy Construction

- 4.1.1 The construction, interpretation and meaning of the terms and conditions of this Policy shall be construed in accordance with the laws of Australia in which the Policy is issued. Any and all disputes relating to the interpretation of this Policy will be subject to the jurisdiction of the courts of Australia.
- 4.1.2 The paragraph titles in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- 4.1.3 For the purposes of this Policy all references to the masculine include the feminine, the singular includes the plural and vice versa.
- 4.1.4 Reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy.

4.2 Alteration of Risk

The Insured shall as soon as reasonably practicable notify Underwriters of any material alteration to the risk during the Period of Insurance including but not limited to:

- 4.2.1 Any merger with or acquisition of another business or the commencement of a branch office or joint venture;
- 4.2.2 The Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- 4.2.3 Any material change in the Insured’s Business; or
- 4.2.4 Cancellation, suspension or termination of any statutory registration relevant to the Insured’s Business.

4.3 Cancellation

- 4.3.1 The Insured may cancel this Policy at any time during the Period of Insurance by giving written notice to Underwriters. Underwriters will allow a pro-rata refund for the unexpired Period of Insurance less any non-refundable duties or charges and any cancellation fees that may apply. Underwriters will not refund any premium if any Claim has been notified during the Period of Insurance.

4.3.2 Underwriters may cancel this Policy in accordance with the provisions of the Insurance Contract Act 1984 or any other applicable laws by giving written notice to the Insured (at either the Insured's brokers address or the last address of the Insured given to Underwriters). Underwriters will allow a pro-rata refund for the unexpired Period of Insurance less any non-refundable duties or charges.

4.4 Limit of Indemnity

Underwriters liability under this Policy shall not exceed for any one Claim or in the aggregate for all Claims, including all Costs and Expenses as described under Insuring Clauses 1.2 and 1.3, the Limit of Indemnity as stated in the Schedule.

Provided always that each Extension or endorsement to this Policy is subject to the terms and conditions, Excess and Limit of Indemnity of this Policy. The inclusion of these Extensions or endorsements does not increase the Limit of Indemnity of the Policy.

4.5 Excess

The Insured shall bear the amount of the Excess stated in the Schedule in respect of each and every Claim made against the Insured and Underwriters shall only be liable to indemnify the Insured in excess of that amount.

All expenses incurred by Underwriters pursuant to the appointment or engagement of professional advisers considered necessary by Underwriters to determine the liability of the Insured and to resolve the Claim shall be borne by the Insured except for any costs and expenses incurred by Underwriters to determine whether Underwriters have a liability to indemnify the Insured under the Policy which shall be borne by Underwriters.

4.6 Multiple Claims

Where one breach of professional duty, act, error or omission results in more than one Claim against the Insured all such claims shall jointly constitute one Claim under this Policy.

Where causally connected or interrelated acts, errors or omissions result in a Claim or Claims under this Policy, all such Claims shall be regarded as one Claim.

4.7 Territory and Jurisdiction

This Policy shall indemnify the Insured for any Claim first brought in a court of law anywhere in the world and arising from a breach of professional duty, act, error or omission committed anywhere in the world except for:

4.7.1 Any Claim first brought within the United States of America or the Dominion of Canada or their territories or protectorates;

4.7.2 Any Claim arising from the enforcement of any judgement, order or award obtained within, or pursuant to the laws of the United States of American or the Dominion of Canada or their territories or protectorates; or

4.7.3 Arising from any breach of professional duty, act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

4.8 Interested Parties

This Policy only provides indemnity to those persons or entities named as an Insured in the Schedule or otherwise included under the terms and conditions of this Policy. No interest in this Policy may be changed, modified, assigned or transferred to any other party without the Underwriters prior written consent.

4.9 Several Liability

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

4.10 Goods and Services Tax (GST)

Where the Underwriters makes a payment under this Policy for the acquisition of goods, services or other supply, the Underwriters will reduce the amount of the payment by the amount of any input tax credit that the Insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where the Underwriters makes a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, the Underwriters will reduce the amount of the payment by the amount of any input tax credit that the Insured is, or will be, or 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.

4.11 Service of Suit

This Policy is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Lloyd's Coverholder. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Lloyd's Australia Limited
Suite 2, Level 21, Angel Place, 123 Pitt Street,
Sydney NSW 2000
Australia
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who will refer your dispute to the Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by the Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

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

- 4.11.1 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;

4.11.2 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:

4.11.2.1 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

4.11.2.2 Referral of the matters in dispute to an independent expert to 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 4.11.3 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.

4.11.3 Following either a mediation or an expert determination pursuant to clause 4.11.2 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
Lloyd's Australia Limited
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.

4.11.4 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.

4.11.5 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.

Notwithstanding anything in this General Condition 4.11, 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.

4.12 Privacy

Lloyd's and its agents are bound by the obligations of the Privacy Act 1988 as amended by the Privacy Amendment Private Sector Act 2000 (the Act). This sets out basic standards relating to the collection, use, disclosure and handling of personal information.

"Personal information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives).

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required.

5. CLAIMS CONDITIONS

5.1 Claims Management

- 5.1.1 The Insured shall not disclose to any person without Underwriters written consent the nature of or terms and conditions of this Policy.
- 5.1.2 The Insured shall not admit liability, or incur any Costs and Expenses, or make any admission, arrangement, offer, promise or payment without Underwriters written consent, such consent not to be unreasonably withheld.
- 5.1.3 Underwriters shall at any time be entitled to take control of or conduct in the name of the Insured the defence or settlement of any Claim. If Underwriters believe the Claim will not exceed the Excess Underwriters may instruct the Insured to conduct the defence of the Claim. In such circumstance the Insured shall be required to provide Underwriters with regular progress reports and Underwriters reserve the right to take control of the defence of such Claim at any time.

5.2 Claims Co-operation

- 5.2.1 The Insured shall as a condition precedent to their right to indemnity under this Policy give to Underwriters such information and co-operation as Underwriters may reasonably require to enable Underwriters to investigate and to defend any Claim under this Policy and/or to enable Underwriters to determine any liability under this Policy including but not limited to the identification of any parties against whom the Insured may have rights.
- 5.2.2 The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

5.3 Notification of Claim

The Insured shall as a condition precedent to their right to indemnity under this Policy give to Underwriters immediate notice in writing during the Period of Insurance of any Claim whether that Claim be oral or in writing made against the Insured.

Notice of any Claim shall be given in writing and delivered to:

Sterling Insurance Pty Ltd
Level 8, 33 Berry Street, North Sydney NSW 2060
PO Box 286, North Sydney NSW 2059
Australia

Notwithstanding the Excess contained in this Policy all Claims, complaints or threats of action must be notified to Underwriters and handled and controlled by Underwriters or no indemnity shall be afforded by this Policy in respect of any such Claims, complaints or threats of action.

5.4 Right to Contest

In the event that Underwriters recommend the settlement of a Claim and the Insured does not agree that such Claim should be settled then the Insured may elect to contest or continue any legal proceedings therewith provided always that Underwriters liability in connection with such Claim shall not exceed the amount for which the Claim could have been settled plus the Costs and Expenses incurred with Underwriters written consent to the date of such election, less the Excess and subject always to the Limit of Indemnity under this Policy.

5.5 Right to Subrogation

Where Underwriters have made any payment of a Claim under this Policy Underwriters shall become entitled to any and all rights the Insured may have against any third party. The Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights including but not limited to the execution of documents necessary to enable Underwriters to effectively bring suit in the name of the Insured and/or the provision of information including signed statements and the giving of evidence at any trial.

6. EXCLUSIONS

This Policy shall not provide indemnity to the Insured for any Claim or Claims:

6.1 War and Terrorism

Arising directly or indirectly from 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.

Furthermore, this Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss.

For the purposes of this Exclusion 6.1 "an 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), committed for political, religious, ideological or similar purposes including the intention to influence any Government and/or to put the public, or any section of the public in fear.

This exclusion also excludes loss, damage, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

In the event any portion of this Exclusion 6.1 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6.2 Nuclear

Arising directly or indirectly from ionising radiations or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material from the combustion of nuclear fuel, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.3 Intentional Acts

Arising from any act or omission of any Insured or their consultants, sub-contractors or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof, or any wilful breach of any statute, contract or duty by any Insured or their consultants, sub-contractors or agents.

6.4 Vehicles

Arising from the ownership, operation or use of any aircraft, vessel, automobile or any other vehicle or mechanically propelled mobile machinery.

6.5 Prior or Pending Claims

Arising from any Claim:

- 6.5.1 First made, threatened or intimated against or to the Insured prior to the Period of Insurance;
- 6.5.2 Relating to any matter disclosed or notified to Underwriters or any other insurer prior to the Period of Insurance as being a Claim or a circumstance that may give rise to a Claim;
- 6.5.3 Relating to any litigation that was in progress or pending prior to the Period of Insurance; or
- 6.5.4 Relating to any fact or circumstance of which the Insured became aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known may give rise to a Claim.

6.6 Pollution

- 6.6.1 Arising out of an act, error or omission directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants;
- 6.6.2 For the cost of removing, nullifying or cleaning up Pollutants;

Provided that this Exclusion 6.6 shall not apply to any Claim arising directly from a breach of professional duty which results in Injury or Damage from a sudden, identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.

For the purposes of this Exclusion 6.6, "Pollutant" shall mean:

- 6.6.3 Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids alkalis, chemicals;
- 6.6.4 Any waste materials including materials recycled, reconditioned or reclaimed; or
- 6.6.5 Any other air emission, odour, waste water, infection or medical waste, oil, oil products or any noise emission.

6.7 Asbestos

Arising directly or indirectly or resulting from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust.

6.8 Associated Entities

Arising from any Claim brought by or on behalf of:

- 6.8.1 Any person, firm or corporation within the Definition of the Insured;
- 6.8.2 Any member of the family of an Insured;

- 6.8.3 Any person or entity which owns, operates, manages or controls an Insured entity;
- 6.8.4 Any entity which is owned by, operated by, managed by or controlled by any Insured party, or
- 6.8.5 Any joint venture partner or entity established to control or manage such joint venture, unless this Policy is endorsed otherwise.

6.9 Employers' Obligations

Arising from any breach of any obligation owed by the Insured as an employer to an Employee including but not limited to:

- 6.9.1 Any Injury or death of any Employee;
- 6.9.2 Damage to or destruction of any property of an Employee; and
- 6.9.3 Any allegation of sexual harassment, sexual discrimination or racial discrimination or any other matter relating to employment practices or any industrial award, determination or legislation.

6.10 Contractual Liabilities

Arising from any liability relating to a duty or obligation assumed by the Insured by way of warranty, guarantee, contract, indemnity or hold harmless agreement unless such liability would have attached to the Insured notwithstanding such assumed duty or obligation.

6.11 Directors and Officers Liability

Arising from any activities as a trustee, director, secretary or officer of any trust or body corporate unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

6.12 Occupiers Liability

Arising from the ownership, use, occupation or leasing of property (real or otherwise) by, to or on behalf of the Insured.

6.13 Fines and Penalties

For punitive, aggravated, multiple or exemplary or other non-compensatory damages; taxes, duties, or fines or penalties imposed by law, including but not limited to civil penalties.

6.14 Professional Fees

Arising from any matter relating to your entitlement or otherwise to fees or charges for work performed.

6.15 Insolvency

Arising from the insolvency, bankruptcy or liquidation of the Insured.

6.16 Trade Debt

Arising from any trading losses or trading liabilities incurred by any business managed or carried on by the Insured, or any loss of the Insured's profit arising from the loss of any client, account or business.

6.17 Retroactive Date

Arising from any breach of professional duty, act, error or omission committed or alleged to have been committed prior to the Retroactive Date stated in the Schedule.

6.18 Joint Ventures

Arising from any activities in which the Insured is engaged as a joint venturer or partner unless such Claim arises directly from a breach of professional duty, act, error or omission of the Insured. Provided always that any indemnity is limited to the Insured's proportion of liability as determined by final adjudication or ruling.

6.19 Previous Business

Arising from any breach of professional duty, act, error or omission by an Insured prior to them joining the Insured, unless this Policy is endorsed otherwise.

6.20 Sale and Supply of Goods

Arising from the sale, storage, supply or distribution of any good, or any actual or alleged provision of advice associated with the sale, storage, supply or distribution of any good except where a Claim arises directly from the cost incurred in correcting a breach of professional duty, act, error or omission in design or specification by the Insured, but shall not include any cost associated with the disposal, repair, recall, manufacture or replacement of any good or goods.

6.21 Toxic Mould

Arising directly or indirectly from any Claim involving in any way the actual or potential presence of mould, mildew or fungi of any kind whatsoever, whether or not directly or indirectly caused by or resulting from the conduct of the Insured's Business.

6.22 Injury

Arising from Injury other than any Claim arising directly from a breach of professional duty.

6.23 Licensing, Registration or Accreditation Enquiries

Arising from or in any way related to prosecution, enquiry, official review, request for information, disciplinary proceeding, hearing, commission or other investigation in relation to the Insured failing to be properly licensed, registered or accredited to provide Professional Services as required by any Acts, rules, regulations or industry codes of practice. Provided always that this Exclusion 6.23 will not apply to any unintentional failure resulting from a breach of professional duty Claim under this Policy and all associated Enquiry Costs & Expenses shall be subject to the limit stated in Extension 2.5.

6.24 JORC Code

Arising out of a failure to comply with the Australian Code for Reporting of Mineral Resources and Ore Reserves (The JORC Code) if a final and non-appealable judgement or adjudication adverse to the Insured establishes that the loss suffered by the claimant arose out of such failure unless emanating from any negligent act, error or omission.

6.25 Damage

Arising from Damage other than any Claim arising directly from a breach of professional duty.

6.26 Cyber

Arising from:

- 6.26.1 The use or misuse of the internet or similar facility;
- 6.26.2 Any electronic transmission of data or other information;
- 6.26.3 Any computer virus or similar problem;
- 6.26.4 The use or misuse of any internet address, website or similar facility; or
- 6.26.5 The functioning or malfunctioning of the internet or similar facility, or of any internet address, website or similar facility.

6.27 Pest and building inspection

Arising directly or indirectly out of:

- 6.27.1 Pre-purchase building inspections or reports; or
- 6.27.2 Pest infestation or the provision of pest inspection reports (pre-purchase or otherwise).

6.28 Failure to Perform or Financial Matters

Arising out of:

- 6.28.1 Insolvency or financial failure of any person or entity involved in any project;
- 6.28.2 Failure to provide, effect or maintain any bond, surety or insurance;
- 6.28.3 Actual or alleged advice in relation to finance, accounting or tax matters;
- 6.28.4 Failure to procure or maintain any financing for the payment of contract work or services;
- 6.28.5 Failure to perform its obligations within any agreed period of time, including but not limited to any delay in delivery or failure to deliver the product or service to be supplied by the agreed time; or
- 6.28.6 Failure to meet contractual requirements relating to efficiency output or durability unless such failure relates to an unintentional error or omission in connection with detailed design and/or detailed specification of the works.

6.29 Products and Workmanship

Arising from:

- 6.29.1 Any defect or alleged defect in any product or good constructed, manufactured, supplied, distributed, sold, installed, assembled, repaired, erected or maintained by the Insured unless the defect results directly from a breach of professional duty, act, error or omission by the Insured in the design of a product or good;
- 6.29.2 Any cost or expense incurred in withdrawing any product or good from sale or recalling any product or good; or
- 6.29.3 Any construction, manufacture, assembly, installation or maintenance unless it results directly from a breach of professional duty.

6.30 Fraud and Dishonesty

Arising out of or in any way connected with any actual or alleged fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission committed or allegedly committed by the Insured or their consultants, sub-contractors or agents.