

Coversure Professional Indemnity Policy Wording



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Important Notices

Your Duty of Disclosure

In order to make an informed assessment of the risk and calculate the appropriate premium, your Insurer needs information about the risk you are asking to insure. For this reason, before you enter into a contract of insurance, you have a duty under the *Insurance Contracts Act 1984 (Cth)* to disclose to your insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept this risk and, if so, on what terms. The duty continues after the proposal form has been completed up until the inception date of the policy and also applies when you renew, extend, vary or reinstate a contract of insurance.

You do not have to disclose anything that:

- Reduces the risk to be undertaken by the insurer;
- Is common knowledge;
- Your insurer knows, or in the ordinary course of its business, ought to know; or
- If the insurer has waived your obligations to disclose.

One important matter to be disclosed is the history of losses suffered by the person or entity seeking insurance and possibly also losses suffered by any related or associated person or entity sought to be covered by the relevant insurance policy. You are responsible for checking that you have made complete disclosure. We suggest that you keep an up to date record of all such losses and claims and that you make all reasonable enquiries of directors, officers, senior managers and any relevant employees in order to ensure that adequate disclosure has been made.

If you have any questions or concerns about whether information needs to be disclosed, please contact us.

Claims Made Policies

Many liability policies are issued on a 'claims made' basis. This means that the policy responds to:

- Claims first made against you during the policy period and notified to the insurer during the policy period, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against him/her; and
- Written notification pursuant to section 40(3) of the *Insurance Contracts Act 1984 (Cth)* of facts which might give rise to a claim against you. If you give written notification of facts as soon as reasonably practicable after you become aware of the facts prior to the expiry of the policy period, the policy will respond even though a claim arising from those facts is made against you after the policy has expired.

Retroactive Date

You will not be entitled to indemnity under your new policy in respect of any claim resulting from an act, error or omission occurring or committed by you prior to the retroactive date, where one is specified in the policy terms offered to you.

Consequences of Non-Disclosure

If you do not comply with your duty of disclosure, your insurer may be entitled to reduce its liability in respect of a claim or may cancel your contract of insurance. If the non-disclosure was fraudulent, the insurer may be able to avoid (or cancel) the contract of insurance from its beginning. This would effectively mean that you were never insured.

Material Changes

You must also notify your insurer of any significant changes which occur during the period of insurance. If you do not, your insurances may be inadequate to fully cover you. We can assist you to do this and to ensure that your contract of insurance is altered to reflect those changes.

Contracts entered into by the Insured Affecting Insurers' rights

Some insurance contracts seek to limit or exclude claims where the insured person has limited their rights to recover a loss from the person who has responsibility for it eg: by signing an agreement which contains a disclaimer, indemnity or limitation of liability of the other party. Please tell us about any contracts of this type which you have entered into or propose to enter into.

Privacy

We are committed to protecting your privacy. We only use the information you provide to us to advise about and assist with your insurance needs. We only provide your information to the insurance companies with whom you choose to deal (and their representatives.) We do not trade, rent or sell your information.

For more information about our Privacy Policy, please ask us for a copy or visit our website www.coversure.com.au.

When completing a proposal form for this insurance:

- Please answer **all** questions giving full and complete answers
- If the space required on the proposal form is insufficient, please use a separate signed and dated sheet in order to provide a complete answer.
- **Please ensure that the proposal form is properly signed and dated.**

Coversure Professional Indemnity Policy

Please read this Policy carefully to make sure that it meets your requirements. This Policy is written on a claims made and notified basis, this means that other than the application of the 'Continuous Cover' clause, the Policy will only respond to claims first made against You and notified to Us during the Policy Period.

You received important notices about your duty of disclosure, unusual terms in professional indemnity insurance policies and our privacy statement prior to the inception. The notices are also included at the end of this document.

Preamble

In consideration of Your payment of the premium to Us and in reliance upon the written statements and declarations contained in the Proposal Form or insurance broker's submission, We agree to insure You in accordance with the terms.

1.0 Insuring Clauses

- 1.1 We will indemnify You against Civil Liability for any Loss incurred by You in respect of any Claim first made against You and which is notified in writing to Us during the Policy Period in connection with Your performance of the Professional Business.
- 1.2 We will pay the Defence Costs incurred by You with Our prior written consent (such consent not to be unreasonably withheld or delayed).
- 1.3 We will pay such Defence Costs referred to in clause 1.2 as and when they are incurred and prior to the final resolution of a Claim, provided that We have not denied indemnity for such Claim.
- 1.4 We will not refuse to pay Defence Costs by reason only that We consider that any conduct as referred to in clause 7.1 (Dishonesty or Deliberate Conduct exclusion) has occurred, until such time as there is a formal admission by You or a final adjudication by a judicial or arbitral tribunal which establishes that such conduct has occurred.
- 1.5 However, You shall repay to Us all payments of Defence Costs incurred on Your behalf if and to the extent that it is established that such Defence Costs are not insured under this Policy, unless We agree in writing to waive recovery of such Defence Costs.

2.0 Limit of Liability

- 2.1 Our liability for Loss in respect of any one Claim shall not exceed the Limit of Liability (except where clause 2.4 applies).
- 2.2 Our aggregate liability under this Policy for all Loss in respect of all Claims will not exceed the Maximum Aggregate Limit of Liability (except where clause 2.5 applies).
- 2.3 If the 'Basis of Limit' in the Schedule is specified as 'Costs in Addition' We will pay Defence Costs in addition to the Limit of Liability.

Provided that if the total amount of Loss applicable to any one Claim exceeds the Limit of Liability, Our liability for Defence Costs shall be only that proportion of them that the Limit of Liability bears to the total amount of Loss applicable to such Claim.

- 2.4 If the 'Basis of Limit' in the Schedule is not specified or is specified as 'Costs Inclusive', We will pay Defence Costs, provided that Our liability for all Loss, Defence Costs and any other payments in respect of any one Claim shall not exceed the Limit of Liability and Our liability for all Loss, Defence Costs and any other payments in respect of all Claims shall not exceed the Maximum Aggregate Limit of Liability.

- 2.5 If a sub-limit of liability is specified in the Schedule for a particular extension then Our total liability under that extension is limited to the amount of that sub-limit of liability (inclusive of Defence Costs) and not the Limit of Liability.

3.0 Excess

- 3.1 The Excess shall be borne by You at Your own expense and Our liability shall only be in excess of this amount.
- 3.2 The application of the Excess does not erode the Limit of Liability or any sub-limit of liability specified in this Policy.

4.0 Civil Liability Clarification

The following clauses are intended to clarify the meaning of Civil Liability as set out in clause 6.4 (Definition of Civil Liability). These clauses do not operate to extend the meaning of Civil Liability to include any criminal liability of whatsoever nature.

4.1 Breach of Confidentiality

The term Civil Liability includes liability arising from a breach of confidence or misuse of any information, which is either confidential or subject to restrictions as to its use.

4.2 Defamation

The term Civil Liability includes liability arising from a libel, slander or defamation.

4.3 Fiduciary Duties

The term Civil Liability includes liability arising from a breach of fiduciary duty.

4.4 Intellectual Property Rights

The term Civil Liability includes liability arising from an infringement of Intellectual Property Rights.

4.5 Interference with Privacy

The term Civil Liability includes liability arising from an unlawful interference with privacy.

4.6 Competition & Consumer Act

The term Civil Liability includes liability arising from an unintentional breach of any civil provision of the Australian Competition & Consumer Act 2010 (Cth), the Trade Practices Act 1974 (Cth), Corporations Act 2001 (Cth) or any similar legislation enacted by the States or Territories of the Commonwealth of Australia or by the Dominion of New Zealand.

4.7 Implied Warranties & Conditions

The term Civil Liability includes liability arising from a breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and/or any provision of the Competition and Consumer Act 2010 (Cth), the Trade Practices Act 1974 (Cth) or any similar legislation enacted by the States or Territories of the Commonwealth of Australia or by the Dominion of New Zealand.

5.0 Automatic Extensions

The following extensions are included automatically in this Policy for nil additional premium. Each such extension is subject to the terms, conditions and exclusions of this Policy except where explicitly stated to the contrary in an extension.

The inclusion of these extensions does not increase the Limit of Liability of the Policy.

5.1 Fraud & Dishonesty

We will indemnify You against Civil Liability for any Loss incurred by You in respect of any Claim first made against You and which is notified in writing to the Us during the Policy Period in connection with

Your performance of the Professional Business and which would otherwise be excluded only by reason of clause 7.1 (Dishonesty or Deliberate Conduct exclusion).

We will also pay (in accordance with the applicable provisions of this Policy) any Defence Costs and Inquiry Costs that would otherwise be excluded only by reason of clause 7.1 (Dishonesty or Deliberate Conduct exclusion).

However, this Extension does not operate to:

- i. indemnify, or pay any Defence Costs or Inquiry Costs on behalf of, any party comprising the Insured engaging in or condoning any conduct that is the subject of clause 7.1 (Dishonesty or Deliberate Conduct exclusion); or
- ii. indemnify You for any Loss, settlement or other payment, or pay any Defence Costs or Inquiry Costs, directly or indirectly arising out of, based upon, attributable to or in consequence of any conduct occurring after the date on which You first discovered, or had reasonable cause for suspicion of, any conduct that is the subject of clause 7.1 (Dishonesty or Deliberate Conduct exclusion).

The aggregate amount of all payments made by Us pursuant to this Extension will not exceed \$500,000 unless otherwise specified in the Schedule.

5.2 Continuous Cover

Where You have failed to exercise Your rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in relation to an earlier professional indemnity insurance policy issued to You by Us, then clause 7.4 (iii) (Known Circumstances exclusion) shall not apply to the facts, circumstances, acts, errors or omissions to which such unexercised rights apply provided that:

- i. You have been continuously insured, without interruption at the commencement of the Policy Period, under a professional indemnity insurance policy issued to You by Us from the earliest time at which You could have reasonably first exercised Your rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in respect of the subject facts, circumstances, acts, errors or omissions; and
- ii. there has been no fraudulent misrepresentation or fraudulent non-disclosure by You in respect of the subject facts, circumstances, acts, errors or omissions; and
- iii. We may reduce our liability to indemnify You or make any payment by reason of this Extension to the extent that We have been prejudiced by Your failure to exercise Your rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) at the earliest time at which You could have reasonably first exercised such rights in respect of the subject facts, circumstances, acts, errors or omissions; and
- iv. in determining any prejudice referred to in clause 5.2(iii) above, We may take into account any factors We may deem to be material including, but not limited to, the limits of indemnity, sub-limits, terms, conditions and exclusions of any applicable earlier professional indemnity insurance policy.

5.3 Extended Reporting Period

If We cancel or do not renew this Policy, other than for non-payment of the premium or material non-disclosure (including but not limited to fraudulent non-disclosure), You will have the right, upon payment of an additional premium of 100% of the expiring annual premium for this Policy, to an extended reporting period of 12 months following the date of cancellation or expiry in which to give Us notice of any Claim or Inquiry.

Any indemnity provided under this extension will only apply to a Claim or Inquiry arising from acts, errors or omissions committed or alleged to have been committed by You before the date of cancellation or expiry and not before the Retroactive Date.

You must make any request for the 12 months extended reporting period in writing, and pay the additional premium to Us, within 30 days after the date of cancellation or expiry (as the case may be).

The extended reporting period shall not apply if this Policy has been replaced by a Professional Indemnity insurance policy effected with Us or some other insurer, or if this Policy is cancelled ab initio.

The aggregate amount of all payments made by Us pursuant to this Extension will not exceed the

Limit of Liability and payments will not be in addition to the Limit of Liability.

5.4 External Complaints Resolution Schemes

- i. Clause 6.5 (Definition of Claim) is amended to include a written complaint made against the You to an External Complaints Resolution Scheme pursuant to the applicable Terms of Reference; and
- ii. Clause 6.18 (Definition of Loss) is amended to include any Award.
- iii. You shall at Our written request exercise any rights You may have pursuant to the applicable Terms of Reference to withdraw any Claim which may be the subject of indemnity under this Policy from the jurisdiction of the External Complaints Resolution Scheme.
In the event of such a request, any third party costs and expenses for which You become liable pursuant to the applicable Terms of Reference in respect of the Claim shall be deemed to be included in the definition of Loss in respect of such Claim.
- iv. Our liability in respect of any Awards which may be the subject of indemnity pursuant to this extension will not exceed \$250,000 any one Claim and \$500,000 in the aggregate for all Claims.

5.5 Inquiry Costs

We will pay Inquiry Costs as and when they are incurred by Us or by You with Our prior written consent (such consent not to be unreasonably withheld or delayed) in respect of an Inquiry provided that:

- i. You are legally required or compelled to attend such Inquiry; and
- ii. such Inquiry pertains to Your performance of the Professional Business or matters directly arising therefrom; and
- iii. written notice of such Inquiry is first received by You during the Policy Period and notified in writing to Us during the Policy Period; and
- iv. We are entitled, at Our sole discretion, to appoint legal or other representation for You at such Inquiry; and
- v. You shall repay to Us all payments of Inquiry Costs incurred on Your behalf if and to the extent that it is established that such Inquiry Costs are not insured under this Policy, unless We agree in writing to waive recovery of such Inquiry Costs; and
- vi. the aggregate amount of all payments made by Us pursuant to this extension will not exceed \$500,000 unless otherwise specified in the Schedule.

5.6 Loss of Documents

We will indemnify You for any reasonable costs and expenses incurred by You with Our prior written consent to replace and/or restore any Documents which have been damaged, destroyed or lost and after diligent search cannot be found, provided that:

- i. such Documents were damaged, destroyed or lost in Your performance of the Professional Business; and
- ii. such Documents were in Your physical possession within the territorial limits of the Commonwealth of Australia or New Zealand; and
- iii. the subject damage, destruction or loss is first discovered by You and notified in writing to Us during the Policy Period; and
- iv. notwithstanding anything to the contrary in this extension, We will not indemnify You in respect of any damage, destruction or loss of any Documents directly or indirectly arising from, in whole or in part:
 - a. wear and tear or any other gradual process; or
 - b. any computer virus or other malicious or damaging software; or
 - c. any act, error or omission committed or made, or allegedly committed or made, by any person or entity who at the time of such act, error or omission was not an Insured; and
- v. You provide satisfactory documentary proof of such damage, destruction or loss; and
- vi. the aggregate amount of all payments made by Us pursuant to this extension will not exceed \$500,000 unless otherwise specified in the Schedule.

5.7 New Subsidiaries

Clause 6.32 (Definition of You/ Your /Insured) is amended to include any Subsidiary Company created or acquired by You during the Policy Period for a period of up to 45 days (but never beyond the expiry date of the Policy Period) from the date of such creation or acquisition.

Provided that:

- i. this extension will only apply in respect of a Claim or Inquiry arising from an act, error or omission occurring entirely on or after the date of creation or acquisition of the Subsidiary Company; and
- ii. the professional business conducted by such Subsidiary Company is materially the same as the Professional Business conducted by the Named Insured.

You may apply to Us, within the above 45 day period, to vary this Policy to continue the operation of this extension in respect of such Subsidiary Company until the expiry date of the Policy Period. You shall supply Us with such additional information relating to the new Subsidiary Company and pay any reasonable additional premium as We may require.

5.8 Severability

Where any party comprising the Insured:

- i. failed to comply with the duty of disclosure under the provisions of the Insurance Contracts Act 1984 Cth); or
- ii. made a misrepresentation to Us before this Policy was entered into; or
- iii. fail to comply with any condition of this Policy;

the rights of any other party comprising the Insured under this Policy will not be prejudiced thereby.

Provided always that this extension shall only apply when:

- a. such other Insured shall be entirely innocent of and have no prior knowledge of any such conduct; and
- b. such other Insured as soon as is reasonably practicable upon becoming aware of any such conduct, advises Us in writing of all known facts in relation to such conduct.

Notwithstanding the above, any fact or knowledge possessed by any past or present partner, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to You.

5.9 Spouses, Estates & Representatives

We will indemnify:

- i. in the event of the death, incapacity or bankruptcy of any party comprising the Insured, any Claim brought against the estate, heirs, assigns, executors, administrators or legal representatives of such Insured; or
- ii. any Claim brought against the lawful spouse or domestic partner of any person comprising the Insured;

as if such Claim had been made against the respective Insured provided such Claim arises from Your performance of the Professional Business.

No indemnity is provided under this extension for any actual or alleged act, error or omission by any such estate, heirs, assigns, executors, administrators, legal representatives, lawful spouse or domestic partner.

5.10 Vicarious Liability for Consultants, Sub Contractors & Agents

The performance of the Professional Business shall be deemed to include acts, errors or omissions of any consultant, sub-contractor or agent of Yours while engaged in the provision of the Professional Business and for which You are liable.

We will not be liable under this extension for such consultant's, sub-contractor's or agent's own liability.

5.11 Run-off Liability

If, during the Policy Period, any of the following events occur:

- i. You merge with or are acquired by another entity not insured under this Policy; or
- ii. You are subject to the appointment of a receiver, controller, administrator, or the commencement of a scheme of arrangement or compromise, or a winding up process; or
- iii. You otherwise cease to trade;

then this Policy will remain in force until the expiry of the Policy Period, but only in respect of a Claim or Inquiry resulting from an act, error or omission occurring or committed prior to such event.

This extension shall have no effect in respect of any merger to which clause 5.7 (New Subsidiaries extension) applies.

5.12 Contract Staff

Clause 6.8 (Definition of Employee) is extended to include any:

- i. natural person who; or
- ii. any incorporated entity with a sole director who is also the only employees of such entity that; is or was engaged by You pursuant to a written contract or agreement to provide Professional Business for You or on Your behalf but only in respect of such Professional Business performed;
 - a. for You or on Your behalf; and
 - b. under Your control and supervision; and
 - c. during the currency of such contract or agreement.

5.13 Civil Fines & Penalties

- i. Clause 6.5 (Definition of Claim) is amended to include any legal or administrative proceedings seeking compensatory civil penalties in connection with your performance of the Professional Business.
- ii. Clause 6.18 (Definition of Loss) is amended to include any compensatory civil penalties.
- iii. However, We will not be liable under this extension for any compensatory civil penalty:
 - a. for which We are legally prohibited at law from indemnifying You;
 - b. based upon, attributable to or in consequence of any:
 1. wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
 2. gross negligence or recklessness; or
 3. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.
- iv. the aggregate amount of all payments made by Us pursuant to this extension will not exceed \$250,000 unless otherwise specified in the Schedule.

5.14 Claims Preparation Expenses

We will indemnify You for any reasonable and necessary out-of-pocket costs and expenses (that are not Defence Costs) incurred by You at Our prior written request in the preparation of a defence of any Claim or attendance at any Inquiry which is the subject of indemnity under this Policy.

The aggregate amount of all payments made by Us pursuant to this extension will not exceed \$25,000 unless otherwise specified in the Schedule.

5.15 Public Relations Expenses

We will indemnify You for Public Relations Expenses incurred by You with Our prior written consent in respect of an Adverse Publicity Event that first occurs and is notified to Us during the Policy Period.

The aggregate amount of all payments made by Us pursuant to this extension will not exceed \$25,000 unless otherwise specified in the Schedule.

5.16 Compensation for Court Attendance

Where;

- i. legal advisers, acting on Your behalf with Our prior written consent, require any Principal or Employee to attend court as a witness in connection with a Claim that is the subject of indemnity under this Policy; and
- ii. the Named Insured actually pays such Principal or Employee their normal salary or wage during such attendance;
- iii. We will pay compensation to the Named Insured equivalent to such Principal's or Employee's daily salary or wage up to a maximum of \$500 per person for each day on which attendance is required subject to a maximum of \$10,000 for all persons in respect of any one Claim. Payments made by Us pursuant to this extension will not exceed \$20,000 in the aggregate for all Claims unless otherwise specified in the Schedule.

5.17 Cyber Interruption Expenses

We will pay Additional Technology Expenses incurred by You in respect of any Cyber Event discovered and notified to Us during the Policy Period provided that:

1. We will pay a maximum of \$1,000 per day during any Cyber Event; and
2. the aggregate amount of all payments made by Us pursuant to this extension will not exceed \$25,000 unless otherwise specified in the Schedule.

6.0 Definitions

6.1 Additional Technology Expenses

means reasonable and necessary additional costs, expenses or consultants fees paid by You to ensure You are able to provide ongoing Professional Business usually provided by electronic means, including telephone, email, website and other internet cloud based resources.

6.2 Adverse Publicity Event

means a Claim or Inquiry which is the subject of indemnity under this Policy and which, in the reasonable opinion of a Principal of the Named Insured, might cause the Your reputation to be seriously affected by adverse or negative publicity.

6.3 Award

means;

- i. any payment of a compensatory nature awarded under any adjudication or arbitration procedure which is binding on You pursuant to the Terms of Reference of an External Complaints Resolution Scheme including any costs that are awarded against You; and
- ii. any payment of a compensatory nature agreed to by You with Our prior written consent under any conciliation procedure pursuant to the Terms of Reference of an External Complaints Resolution Scheme.

6.4 Civil Liability

means legal liability arising from any civil cause of action.

6.5 Claim

means:

- i. any written or verbal demand for compensation made by a third party communicated to You under any circumstances and by whatever means;
- ii. any writ, statement of claim, summons, application or other legal or arbitral proceedings, cross-claim, counterclaim or third or similar party notice issued against or served upon You which seeks compensatory relief made by a third party against You.

Where more than one Claim arises from, is based on, is attributable to, or is in consequence of a single act, error or omission, or a series of acts, errors or omissions consequent upon or attributable to one source or originating cause, all such Claims shall jointly constitute a single Claim for the purposes of this Policy.

6.6 Cyber Event

means an actual malicious attack event that causes interruption of more than 48 continuous hours to the electronic communications and operating equipment used by You in the performance of the Professional Business. Such equipment shall include telephone, email, website and other internet cloud based resources.

6.7 Defence Costs

means reasonable legal costs and other expenses resulting solely from the investigation, defence, settlement or appeal of any Claim in respect of any Loss that is the subject of indemnity under this Policy but shall not include any internal or overhead expenses incurred by You or the costs of Your time.

6.8 Documents

means 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. Documents do not include bearer bonds or coupons,

stamps, bank or currency notes or negotiable instruments.

6.9 Employee

means any natural person employed under a contract of service or apprenticeship and includes any part-time, casual, trainee, volunteer or work experience personnel.

6.10 Excess

means the amount so specified in the Schedule.

6.11 External Complaints Resolution Scheme

means an external complaints resolution scheme:

- i. approved by the Australian Securities & Investments Commission pursuant to Australian Securities & Investments Commission Regulatory Guide 139; or
- ii. authorised by another regulatory authority, or professional or industry association or body; of which You are a member at the relevant time.

6.12 Terms of Reference

shall have the same meaning as that specified in Australian Securities & Investments Commission Regulatory Guide 139, or any other formal terms of reference, guidelines or code governing the operation of the relevant External Complaints Resolution Scheme as may be applicable.

6.13 Family Member

means:

- i. any spouse, domestic partner or companion;
- ii. any parent, or parent of the spouse, domestic partner or companion; or
- iii. any sibling, child, adopted child or any child living with the person as if the child were a member of the person's family.

6.14 Inquiry

means any civil, criminal, administrative or disciplinary inquiry, investigation, examination or hearing held by any official or legally constituted body including but not limited to any investigation, examination or enquiry:

- i. by way of a Royal Commission or Coronial Enquiry, or conducted by any regulatory authority; or
- ii. conducted by any disciplinary committee of any association, industry or professional body of which You are a member.

6.15 Inquiry Costs

means reasonable legal costs and other reasonable expenses resulting solely out of any attendance and/or the provision of documents or information by You at any Inquiry but shall not include any internal or overhead expenses incurred by You or the costs of Your time.

6.16 Intellectual Property Rights

means all existing and future intellectual property rights in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, moral right (under the Copyright Act 1968 (Cth)), patents, trademarks, service marks, trade names, domain names, brand names, slogans, logos, emblems, registered designs and circuit layout rights (and all applications or renewals for protection or registration of these rights) together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.

6.17 Limit of Liability

means the amount so specified in in the Schedule.

6.18 Loss

Means:

- i. compensatory damages; and/ or
- ii. claimant's costs, fees and expenses; and/ or
- iii. post-judgment interest; and/ or
- iv. settlements agreed with Our prior written consent;

but shall not include:

- a. civil or criminal fines or penalties imposed by law; or
- b. punitive, exemplary, multiple or aggravated damages; or
- c. any amount uninsurable at law; or

6.19 Maximum Aggregate Limit of Liability

means the amount so specified in in the Schedule or, if not specified in the Schedule, the amount specified as the Limit of Indemnity in the Schedule.

6.20 Named Insured

Means any person, partnership, company or other legal entity so specified in the Schedule.

6.21 Policy Period

means the period of time from the inception date to the expiry date so specified in the Schedule

6.22 Policy

means this wording, the Proposal Form, the Schedule and any endorsements to the wording.

6.23 Principal

means any natural person who;

- i. in the case of a partnership, is appointed as a partner in such partnership; or
- ii. in the case of a corporation, is appointed as a director of such corporation.

6.24 Professional Business

Means the professional business as specified in the Schedule.

6.25 Proposal Form

means the proposal form or application for insurance made by You to Us in respect of this Policy and:

- i. any additional documentation attached to such proposal form or application; and
- ii. any documentation, representation or other information provided to Us as part of any submission made by You or on Your behalf in respect of this insurance.

6.26 Public Relations Expenses

means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged by You with Our prior written consent to prevent or limit the adverse effects of or negative publicity from an Adverse Publicity Event.

6.27 Retroactive Date

means the date so specified in the Schedule.

6.28 Schedule

means the schedule attaching to and forming part of this Policy.

6.29 Senior Counsel

means 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.

6.30 Subsidiary Company

means:

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

6.31 We/ Our/ Us

means the underwriters specified as insurer(s) in the Schedule.

6.32 You/Your/Insured

Means each of the following:

- i. the Named Insured; and

- ii. any past, present or future Principal or Employee of the Named Insured, but only in relation to Professional Business conducted for or on behalf of the Named Insured whilst they are a Principal, or Employee of the Named Insured.

7.0 Exclusions

We will not be liable to indemnify You for any Loss, settlement or other payment, or pay any Defence Costs, Inquiry Costs or any other costs or expenses, directly or indirectly arising out of, based upon, attributable to or in consequence of:

7.1 Dishonesty or Deliberate Conduct

- i. any actual or alleged dishonest, fraudulent, criminal or malicious conduct of any Insured; or
- ii. any conduct of any Insured committed or allegedly committed with a reckless disregard for the consequences thereof; or
- iii. any conduct of any Insured committed or allegedly committed with criminal intent or purpose, or with knowledge that such conduct was in breach of any statute, contract, right or duty:

7.2 Insolvency

any liquidation, bankruptcy or insolvency of any Insured:

7.3 Contractual or Commercial Liabilities

- i. any liability assumed by You under a contract, unless such liability would have attached to the Insured in the absence of such contract; or
- ii. any liability You assume by any express guarantee or express warranty, unless such liability would have attached to You in the absence of such warranty or guarantee; or
- iii. any duty or obligation assumed by You that is not assumed in the normal conduct of the Professional Business; or
- iv. any trading debt incurred, or any guarantee provided in respect of such debt, by You; or
- v. any refund or waiver of professional fees (including any related expenses and disbursements):

7.4 Known Circumstances

- i. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry notified under any previous policy; or
- ii. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry declared in the Proposal Form or any previous proposal form or application for insurance; or
- iii. any fact, circumstance, act, error or omission which may give rise to a Claim or an Inquiry of which any Insured was aware, or ought reasonably to have been aware, prior to the Policy Period:

7.5 Retroactive Date

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

7.6 Product-Related Liabilities

- i. the replacement of or lack of efficacy of any goods manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold or supplied by You; or
- ii. any defect in any goods manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold or supplied by You;

except where such Loss, Defence Costs, Inquiry Costs, settlement or payment arises solely and directly from any advice, design or specification provided by You in the performance of the Professional Business:

7.7 Directors' & Officers' Liability/ Trustees' Liability

any Insured acting, or allegedly acting, in a capacity as a director or officer of any corporation or other incorporated body or trustee of any trust:

7.8 Obligations to Employees

bodily or mental injury, sickness, disease, death or emotional distress of any person arising out of, or in the course of, their employment or deemed employment by, or apprenticeship with, You:

7.9 Occupier's Liability

any occupation, ownership, control or management of any real property by You:

7.10 Motor Vehicles/ Aircraft/ Watercraft

the ownership, use, or operation of any motor vehicle, aircraft or watercraft of any kind by You:

7.11 War/ Terrorism

- i. war, invasion, acts of foreign enemies, or hostilities (whether war is declared or otherwise); or
- ii. insurrection, civil or military uprising, rebellion, revolution, civil war or military or usurped power; or
- iii. terrorism; being any act, or preparation in respect of an act, of any person or group of people, including but not limited to the use of or threat of force or violence, where the purpose of such act by its nature or context is to further a political, religious, ideological, ethnic or similar aim and/ or to intimidate or influence a government (whether lawfully constituted or otherwise), the public or any section of the public; or
- iv. the confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority; or
- v. the imposition of any economic, trade or political sanctions (whether lawful or otherwise) by any sovereign power; or
- vi. the use of military or para-military force or personnel or warlike action taken by any government, public or local authority to control, prevent, suppress, defend against, retaliate or to otherwise respond to any act described in paragraphs (i) to (v) of this exclusion:

7.12 Nuclear Risks

- i. the use, storage, handling or transport of any radioactive material; or
- ii. the use or operation of any nuclear reactor, particle accelerator, particle generator or similar device; or
- iii. ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, waste or other radioactive material whether occurring naturally or otherwise; or
- iv. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- v. the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon, nuclear explosive device or nuclear component thereof;

except where such Loss, Defence Costs, Inquiry Costs, settlement or payment arises from Your use of radioisotopes, radium or radium compounds away from the place where such are made or produced and such use is exclusively incidental to ordinary industrial, educational, medical or research activities in the performance of the Professional Business:

7.13 Asbestos

or contributed to or aggravated by asbestos in any form or quantity:

7.14 Geographical Limits

any act, error or omission committed, attempted or alleged to have been committed or attempted in the United States of America, Canada, their territories, protectorates or dependencies:

7.15 Licensing

any act, error or omission committed, attempted or alleged to have been committed or attempted by You in the conduct of any activity for which You are not properly licensed, registered or authorised in accordance with any relevant legislation or regulation:

7.16 Intellectual Property Rights

- i. any intentional infringement of Intellectual Property Rights; or
- ii. any infringement of Intellectual Property Rights arising from any promotional, marketing or advertising material circulated, broadcast or utilised in any way by You:

7.17 Anti-Competitive Conduct

any contravention of;

- i. any of the provisions of Part IV, Part XI B and Schedule 1 of the Competition and Consumer Act 2010 (Cth) as amended from time to time; or
- ii. any provision of any predecessor or successor legislation with materially similar effect; or
- iii. any provision of any legislation applicable in another jurisdiction with materially similar effect:

7.18 Known Claims & Inquiries

any Claim or Inquiry;

- i. that has been notified under any previous policy; or
- ii. declared in the Proposal Form or any previous proposal form or application for insurance; or
- iii. known to any Insured prior to the Policy Period:

7.19 Related Parties

any Claim which is brought by or initiated by or on behalf of;

- i. any Insured; or
- ii. any person who, at the time of the act, error or omission giving rise to the Claim, was a Family Member of any Principal of the Insured; or
- iii. any person or entity with a financial, executive or managerial interest in any Insured; or
- iv. any entity in which any Insured, or any person who, at the time of the act, error or omission giving rise to the Claim, was a Family Member of any Principal of the Insured, has a financial, executive or managerial interest;

this exclusion however, does not apply to any Loss, Defence Costs, settlement or any other payment arising from any Claim made by an independent third party without the co-operation or solicitation of any Insured:

7.20 Jurisdictional Limits

any Claim or Inquiry;

- i. brought in a court of law or before a judicial, administrative, arbitral, investigative or disciplinary panel of any description in; or
- ii. directly or indirectly arising out of, based upon, attributable to or in consequence of the enforcement of any judgement, order or award obtained within or pursuant to the laws of;

the United States of America, Canada, their territories, protectorates or dependencies:

7.21 Waived or Limited Rights

You in any way waiving, limiting or reducing their rights of recovery or contribution from any other party.

8.0 Conditions

8.1 Notification

You shall notify Us in writing of any Claim made against You, or any notice of an Inquiry received by You, as soon as practicable during the Policy Period.

All notifications and other correspondence in respect to any Claim or Inquiry should be forwarded to:

Coversure
Level 5, 1 Chandos St
St Leonards
NSW
Electronic lodgement: Claims@Coversure.com.au

8.2 Conduct of Defence

- i. You shall not settle any Claim, incur any Defence Costs or Inquiry Costs, make any admission, offer or payment or otherwise assume any contractual obligation or waive any right with respect to any Claim, Inquiry, or any other matter which may be the subject of indemnity under this Policy, without Our prior written consent. We shall not be liable for any Loss, Defence Costs, Inquiry Costs, settlement or other payment, attributable to or in consequence of any admission, offer, assumed obligation or waiver to which We have not given prior written consent.
- ii. We shall be entitled, at our absolute discretion, to conduct at any time:
 - a. any investigation We consider necessary into any Claim, Inquiry or any other matter which may be the subject of indemnity under this Policy; or
 - b. in Your name, the defence or settlement of any Claim; or
 - c. Your representation at any Inquiry.Any amount incurred by Us on Your behalf shall be deemed to be part of any Loss, Defence Costs or Inquiry Costs (as applicable) in respect of such Claim or Inquiry. However, any costs and expenses We may incur solely on our own behalf to determine Your right to indemnity under this Policy shall not form part of any Loss, Defence Costs or Inquiry Costs.
- iii. You shall use due diligence and do and concur in all things reasonably practicable to avoid or diminish any Loss, Defence Costs and Inquiry Costs.
- iv. You shall provide to Us with all relevant information, evidence and documentation, and shall provide Us with all assistance and co-operation as We may reasonably require, to enable Us to investigate and to defend any Claim or any other matter which may be the subject of indemnity under this Policy, to provide representation at any Inquiry and/ or to enable Us to determine its liability under this Policy.
- v. You shall meet Your obligations under clause 8.2 in a timely fashion and shall bear Your own costs incurred in complying with the same.
- vi. Any person seeking indemnity under this Policy shall be subject to and shall comply with all duties and obligations of an Insured under this Policy.

8.3 Insured's Rights in Respect of Defence & Settlement

- i. We shall not require You to contest any Claim unless a Senior Counsel (to be mutually agreed by You and Us) shall advise in writing that such Claim should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential Loss, Defence Costs, settlement and any other payment) and Your prospects of successfully defending the Claim. The cost of obtaining such Senior Counsel's opinion shall form part of the Defence Costs.
- ii. In the event that We recommend settlement in respect of any Claim and You do not agree that such Claim should be settled, You may elect to contest such Claim provided always that Our liability for all subsequent Loss, Defence Costs, settlement or other payment in connection with such Claim shall not exceed Our prospective liability for the Claim had it been so settled.

8.4 Subrogation

- i. If indemnity is granted under this Policy in respect of any Loss, Defence Costs, Inquiry Costs, settlement or any other payment, We shall be subrogated to all Your rights of recovery, contribution and indemnity in respect of such Loss, Defence Costs, Inquiry Costs, settlement or payment.

- ii. You must always act to secure and preserve all rights of recovery, contribution and indemnity, and must provide all necessary assistance and execute all documents to enable Us to enforce those rights referred to in clause 8.4(i).

8.5 Allocation

- i. In the event You are a party to a Claim or Inquiry that is only subject to partial indemnity under this Policy You and Us will use our best efforts to agree upon a fair and proper allocation between Loss, Defence Costs, Inquiry Costs, settlement or any other payment that is the subject of indemnity under this Policy and such amounts that are not the subject of indemnity under this Policy.
- ii. In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by You and Us) shall, as an expert and not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made a determination We may, in Our absolute discretion, pay such Loss, Defence Costs, Inquiry Costs, settlement or any other payment that is the subject of indemnity under this Policy as We consider appropriate.
- iii. The cost of obtaining such Senior Counsel's determination shall form part of the Defence Costs.

8.6 Other Insurance

- i. This Policy shall apply only in excess of:
 - a. any other insurance specified in the Proposal Form;
 - b. any other insurance declared to Us under clause 8.6(ii);
 - c. and any renewal or substitute for such insurances.
- ii. You must notify Us of any other insurance of a similar nature to this Policy to which You are a party, an insured or a beneficiary, within 30 days of the taking out of such insurance.
- iii. In the event of a Claim or Inquiry You must promptly notify Us of any other insurance under which You may be entitled to any indemnity or other benefit in respect to any Claim, Inquiry or any other matter which may be the subject of indemnity under this Policy. You must provide Us with all information in respect of such insurance as We may reasonably request including the policy number and identity of the insurer.

8.7 Notice & Authority

The Named Insured first specified in the Schedule shall act on behalf of all parties comprising the Insured with respect to:

- i. the receipt and acknowledgement of all notices required by law; and
- ii. the giving and receiving of any notice under this Policy; and
- iii. the payment of premiums and other charges that may become due under this Policy; and
- iv. the receipt and acceptance of any endorsements issued to form a part of this Policy.

8.8 Assignment

This Policy and any rights hereunder cannot be assigned without Our prior written consent.

8.9 Governing Law

Any interpretation of this Policy relating to its construction, validity or operation shall be made in accordance with the laws of the Commonwealth of Australia and the state or territory in which it is issued and the parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.

8.10 Plurals & Titles

- i. The titles of the clauses and paragraphs in this Policy are for convenience only and do not lend any meaning to this contract except for reference purposes.
- ii. The singular terms used in this Policy include the plural and vice versa, except where the context requires otherwise.
- iii. In this Policy some words starting with capital letters (except for titles of clauses and paragraphs) have special meaning and are defined.

8.11 Cancellation/Termination

- i. The Named Insured may cancel this Policy by giving notice in writing to Us at any time.
- ii. Cancellation will take effect no earlier than the day on which such notice is received by Us.
- iii. We may cancel this Policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984, such cancellation to take effect 7 days from the time We issue the notice

- of cancellation.
- iv. After cancellation a will retain a short period premium calculated at the pro rata proportion of the premium for the time the policy has been in force plus ten percent.
 - v. The Named Insured will receive a refund of any balance of the premium actually paid, unless there have been any claims or claim circumstances notified during the Policy Period, in which case no refund shall be given.

8.12 Currency

All premiums, limits, retentions and other amounts under this Policy are expressed and payable in Australian currency.

8.13 Material Change to Risk

You shall immediately notify Us of any material change in the risk that is the subject of this Policy during the Policy Period, including but not limited to:

- i. any merger with, or acquisition of or by, another company, entity, partnership or business or the establishment of a subsidiary company or branch office;
- ii. the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any Insured;
- iii. any material change in the nature of Your professional activities as represented in the Proposal Form;
- iv. the cancellation, suspension or loss of, or the imposition of any restriction or limitation on, any license, registration or authorisation under any legislation or regulation applicable to any aspect of the Professional Business.

Where such notice is given, We shall be entitled to negotiate with You the terms for the continuation of this Policy. We shall also be entitled to cancel this Policy in accordance with the provisions of the Insurance Contracts Act 1984.

We shall be entitled to reduce any indemnity or payment which may be available to You under this Policy in respect of any Loss, Defence Costs, Inquiry Costs, settlement or any other payment to the extent of any prejudice suffered by Us arising from any failure by You to comply with this condition.

8.14 Validity

This Policy is not valid unless the Schedule is issued by Our authorised representative

8.15 Treatment of Goods & Services Tax

Our liability to You in respect of any indemnity which may be available under this Policy shall be calculated taking into account any input tax credit to which You are entitled for any relevant acquisition or would have been entitled had You made any such relevant acquisition.

The Excess shall apply net of any entitlement You may have to an input tax credit