



# Not for Profit Association Liability Package



**Making a real difference to the way insurance is provided  
to the Not for Profit sector**

## Community Underwriting - Our Story

Community Underwriting operates under a unique business model in the Australian insurance market.

Our story begins over 40 years ago when the NSW Meals on Wheels Association (now Meals on Wheels NSW Ltd) assisted a few member Services that were having difficulty obtaining insurances at a reasonable cost.

That grew over the next thirty years into a comprehensive insurance facility assisting over 800 Not for Profits around Australia. In 2014 we created a change in the way that the facility provided insurance to Not for Profit organisations.

Today we are an underwriting agency majority owned by our larger Not for Profit clients, returning our surplus funds back into the sector.

Our 40 year heritage and being uniquely owned by the sector gives us a level of knowledge and empathy that is difficult to match in a corporate insurance organisation.

Our business model is tangible proof of this difference. Each year seventy percent of our surplus is returned to our Not for Profit shareholders as donations.

A further five percent of our surplus is set aside each year to fund a small grants program for our non shareholder clients. Our insurer partners now add to this grants pool to enable us to expand even further the number of clients that we are able to assist.

Join us in making a real difference to the way insurance is provided in our sector.

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**Insuring Not for Profits - It's All We Do**

Community Underwriting Agency Pty Ltd  
ABN 60 166 234 715  
AFS License No 448274

# Important Information

## About Community Underwriting

Community Underwriting Agency Pty Ltd (Community Underwriting) acts under a binding authority as Agent for Berkley Insurance Company trading as Berkley Insurance Australia (Berkley Insurance Australia) to issue, vary and cancel policies on Berkley's behalf. In all aspects of this Policy, Community Underwriting acts as an agent for Berkley Insurance Australia, the Insurer and not for the Insured.

## About The Insurer

Berkley Insurance Australia (ABN 53 126 559 706) is part of the Berkley Group of Companies. Founded in 1967 the Berkley Group of Companies is one of the USA's premier commercial lines property and casualty insurance providers. Each of the operating units in the Berkley group participates in a niche market requiring specialised knowledge about a territory or product.

The Berkley Group of companies is led by Berkley Corporation, located in Greenwich, Connecticut, USA. It is listed on the New York Stock Exchange under the symbol WRB. Member companies of the Berkley Group have offices across the USA and in the United Kingdom, South America, Continental Europe, Australia, Singapore and Hong Kong.

## About This Policy

This Policy is an important document. It is a legal contract between you and Us. The Policy wording, the Schedule and any Endorsements together set out the cover provided, the amount insured and the terms and conditions of Your insurance.

Please read it carefully to understand what We cover, what We exclude, what We pay to settle your claims and other important information.

In issuing this policy We have relied upon information provided by you and/or your broker. If this information is incorrect or you fail to observe the terms and conditions of this Policy, cover may be denied, reduced or cancelled.

## The Duty of Disclosure

### *Your duty of disclosure*

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until We agree to insure You.

### *If You do not tell Us something*

If You do not tell us anything You are required to tell Us, We may cancel Your contract or reduce the amount We will pay You if You make a claim or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

## *Renewal of Eligible Contracts of Insurance*

### *Your duty of disclosure*

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

Also, We may give You a copy of anything that You have previously told Us and ask You to tell us if it has changed. If We do this, You must tell us about any change or tell Us that there is no change.

You have this duty until We agree to renew the contract.

### *If You do not tell Us something*

If You do not tell us anything You are required to tell Us, We may cancel Your contract or reduce the amount We will pay You if You make a claim or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

## Claims Made Insurance

Some of the Insuring Clauses and Extensions to this Policy if selected, will be issued on a "claims made and notified basis". This means that you are covered for claims made against you and notified to Us during the Policy Period. It does not provide cover for:

- claims arising from an event which occurred before the "retroactive date" where such a date is specified in the Schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the Policy Period);
- claims made, threatened or intimated before the

- period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the Policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy.

## Privacy

Community Underwriting and Berkley Insurance Australia seek at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If We disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information:

The information contained in this document and any other documents provided to Us will be dealt with in accordance with our respective Privacy Policies.

Disclosure of Information that you provide to Us:

Community Underwriting and Berkley Insurance Australia will only use the information in accordance with the terms of the Privacy Policies. Without limiting the application of the Policy Community Underwriting and Berkley Insurance Australia may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with Us you consent to Community Underwriting and Berkley Insurance Australia and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to Us that where you provide Us with personal information that you have collected from other individuals:

- that the information has been collected in accordance with the Privacy Act 1988.
- that We are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- you, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Community Underwriting and Berkley Insurance Australia against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing:

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless you have given Us Your permission for Us to do this.

Cross Border:

We will share your personal information with the Community Underwriting and the Berkley group of companies. Our data containing your information is stored in our data centre using dedicated hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on Our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on Our website or if you have any complaints or concerns over the protection of the information you have given to Us or that We have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to [australiacclaims@berkleyinaus.com.au](mailto:australiacclaims@berkleyinaus.com.au).

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Sydney NSW 2000

Ph: 02 9275 8500 / Fax: 02 9261 2773

Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)

Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

## Complaints

Any enquiry or complaint relating to this insurance should in the first instance be referred to:

Complaints Manager, Community Underwriting Agency Pty Ltd P.O. Box 173, Balmain NSW 2041

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact:

The National Head of Claims, Berkley Insurance Australia  
P.O. Box Q296, QVB Sydney NSW 1230.



# 1. Insuring Clauses

## 1.1. Insuring Clauses

### 1.1.1 Officer Bearer's Liability

We will indemnify the Insured Persons, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured Persons during the Policy Period in respect of any Wrongful Act by the Insured Persons.

### 1.1.2 Named Insured Reimbursement

We will indemnify the Named Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured Persons during the Policy Period in respect of any Wrongful Act by the Insured Persons in the capacity as an Insured Person, but only when the Named Insured shall be required or permitted to indemnify the Insured Persons pursuant to law, or by reason of any indemnity clause in the trust deed, constitution or memorandum or articles of association of the Named Insured.

### 1.1.3 Professional Indemnity

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Policy Period arising out of the conduct of the Professional Business by the Insured.

### 1.1.4 Named Insured Liability

We will indemnify the Named Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Named Insured during the Policy Period in respect of any Wrongful Act committed by the Named Insured.

### 1.1.5 Employment Practices Liability

We will indemnify the Insured for the amount of any Claim including claimant's costs and expenses first made against the Insured and notified to Us during the Policy Period in respect of any Employment Practices Wrongful Act by the Insured.

### 1.1.6 Fidelity and Third Party Crime

We will indemnify the Named Insured for any Direct Financial Loss sustained in consequence of any:

- a. Insured Person Theft; or
- b. theft or fraudulent act committed by a Third Party;

provided always that such loss is first discovered by the Named Insured during the Policy Period.

### 1.1.7 Crisis Consultancy Expenses

We will indemnify the Insured for any Crisis Loss arising from a Crisis Event which first occurs during the Policy Period.

The cover provided by this Insuring Clause:

- a. is not subject to any Excess; and
- b. extends to a maximum period of 180 days after the Crisis Event first occurs; and
- c. is limited to a maximum of \$250,000 in respect of any one Crisis Event.

### 1.1.8 Fines and Penalties

We will indemnify the Insured for Fines or Penalties arising from any Claim covered by Insuring Clauses 1.1.1 to 1.1.6 inclusive, first made during the Policy Period in respect of any Wrongful Act, provided always that:

- 1.1.8.1 the Wrongful Act giving rise to the Claim was not intentional, wilful, reckless or deliberate;
- 1.1.8.2 indemnification is permitted at law; and
- 1.1.8.3 We will not indemnify the Insured for Fines and Penalties imposed in connection with any requirement to pay taxes, rates, duties, levies, charges, fees or other revenue charge or impost.

The cover provided by this Insuring Clause is not subject to any Excess.

### 1.1.9 Tax Audit

We will indemnify the Insured for Professional Fees reasonably and necessarily incurred in connection with an official Tax Audit by an Authority, for which formal written notice is received by the Named Insured and notified to Us during the Policy Period.

The cover provided by this Insuring Clause is limited to a maximum of \$250,000 any one Tax Audit Loss and in the aggregate in any one Policy Period.

## **1.2 Defence Costs**

We will also indemnify the Insured for Defence Costs where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed).

Defence Costs are in addition to the Indemnity Limit for up to:

- a. \$5,000,000;
- b. the Indemnity Limit

whichever is the lesser. However if the amount paid to settle any claim including claimant's legal costs is more than the Indemnity Limit, then Our liability for Defence Costs shall be in the same proportion as the Indemnity Limit bears to the sum required to settle the claim, including claimant's legal costs.

## 2. Automatic Extensions

We will provide the following cover, provided always that:

- a. the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- b. the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

### Extensions that Apply to All Insuring Clauses

#### 2.1 Newly Created or Acquired or Disposed Subsidiary Companies

We will indemnify, in the same manner and to the same extent as the Named Insured, any entity or subsidiary acquired or created by the Named Insured during the Policy Period, provided always that:

- 2.1.1 the Policy Period applicable to such cover will be the period commencing on the date of such acquisition or creation and expiring sixty (60) days after that date or on the expiry of the Policy Period (whichever is the earlier);
- 2.1.2 the Retroactive Date applicable to such cover will be the date of acquisition or creation of the entity or subsidiary; and
- 2.1.3 the Claim arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the Named Insured's Professional Business.

Note:

- a. The Named Insured may apply to Us within sixty (60) days of this extension being triggered to vary the policy to continue the cover provided by this extension until the expiry of the Policy Period by notifying Us of the acquisition or creation of the entity or subsidiary and providing all information requested by Us.

Any such variation will only be offered by Us at Our sole and absolute discretion having regard to the nature of the risk to be assumed by Us and subject to any additional terms imposed including the charging of any additional premium which it considers appropriate.

In the event the Insured does not accept the terms offered or the amount of any additional premium, the Insured may cancel the Policy in accordance with clause 7.3 Cancellation.

- b. If the Named Insured effects a sale or dissolution of a Subsidiary Company, We will continue to indemnify the Subsidiary Company and any Insured Person in relation to that Subsidiary Company as per this Policy, but only in respect of Claims or Investigations for Wrongful Acts prior to the effective date of the sale or dissolution.

#### 2.2 Claim Preparation Costs

We will indemnify the Insured for reasonable and necessary costs and expenses incurred with Our prior written consent (not to be unreasonably withheld) for the preparation of any claim under this policy that is covered by this policy, provided always that:

- 2.2.1 cover afforded under this extension will not include any Defence Costs; and
- 2.2.2 the maximum aggregate amount payable under this extension is \$50,000.

The cover provided by this extension is not subject to any Excess.

#### 2.3 Costs of Attendance

In the event of any Insured Person attending:

- 2.3.1 any court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or inquiry as a witness;
- 2.3.2 at an interview in the presence of a lawyer conducting the defence of any Claim for the purpose of composing a witness statement;
- 2.3.3 at a conference or consultation with a barrister for the purpose of preparation in relation to any Claim;
- 2.3.4 as an observer at a court hearing, arbitration, mediation, conciliation or alternative dispute resolution proceeding or Inquiry, provided that We shall only be liable for the attendance of one observer for all Insured's per day; and
- 2.3.5 where the attendance is in connection with any Claim in respect of which the Insured is entitled to indemnity under this policy,

We will indemnify the Named Insured for attendance costs of any Insured Person up to an amount of \$1,000 per day for all Insured Persons for each day on which attendance is required up to a maximum of \$100,000 in any one Policy Period.

The cover provided by this extension is not subject to Claims Condition 6.6.

## 2.4 Public Relations Expenses

We will indemnify any Insured for any reasonable public relation costs and expenses (not otherwise covered by Insuring Clause 1.1.7) incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) in the design and implementation of a publicity campaign to limit the adverse effects or negative publicity of any Insured arising from a Claim or Investigation which is covered by this policy.

The cover provided by this extension is not subject to any Excess.

## 2.5 Mitigation Costs

We will indemnify the Insured for reasonable and necessary mitigation costs and expenses incurred or agreed to be incurred by the Insured;

2.5.1 as a result of a reasonable and necessary action taken by the Insured to reduce the amount of any potential Claim that would be covered under this policy, provided that:

- a. No admission of liability (whether by word, conduct or otherwise) is made by the Insured
- b. We have given prior written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such mitigation costs or expenses;
- c. We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension;
- d. cover afforded under this extension will not include any Defence Costs; and
- e. the maximum aggregate amount payable under this extension is \$50,000.

## 2.6 Advancement of Defence Costs

If We do not exercise Our rights under Claims Condition 6.3 to take over the conduct of a Claim on behalf of the Insured Persons and providing that We have not denied indemnity in respect of the Claim, then We will advance

- a. Defence Costs in accordance with Insuring Clause 1.2; and/or
- b. Crisis Loss in accordance with Insuring Clause 1.1.7 and/or
- c. Public Relations Expenses in accordance with Automatic Extension 2.4.

We will pay any costs or expenses to be advanced within 30 days of receipt of an invoice for the same.

If it is subsequently shown that the Insured Person was not entitled to indemnity under this policy, then We retain the right to seek recovery of the costs and expenses advanced.

## 2.7 Emergency Defence Costs

We will indemnify the Insured for any Defence Costs, Crisis Loss or Public Relations Expenses which are incurred prior to obtaining Our consent, provided always that:

- 2.7.1 such costs or expenses are incurred as a result of a sudden, urgent and unexpected occurrence or occasion requiring immediate action and it would not be considered reasonable in such a situation to obtain Our consent to the incurring of the costs or expenses; and
- 2.7.2 Our written consent is obtained within thirty (30) days of the first of such costs or expenses being incurred.

We will only indemnify the Insured for that part of the Insured's liability in respect of such costs incurred above the Excess. If We subsequently refuse to indemnify the Claim to which the costs or expenses relate, the Insured must reimburse Us for any costs or expenses that We have paid.

The maximum aggregate amount payable under this extension is \$250,000.

## 2.8 Costs of an Inquiry or Investigation

We will indemnify the Insured for the Investigation Costs and Expenses incurred in connection with the preparation and/ or production of documents or information for the compliance, co-operation and/or representation by the Insured at any Investigation.

The coverage provided by Automatic Extension 2.8 shall only apply where any notice requiring the presentation and/ or production of any documentation and/or representation by the Insured is first served during the Period of Insurance.

The cover provided by this extension is not subject to Claims Condition 6.6.

## 2.9 Continuous Coverage

We will indemnify the Insured for any Claim arising from any fact, matter or circumstance known to the Insured, prior to the Policy Period, and which the Insured knew, or a reasonable person in a similar position and



Professional Business to the Insured could, in the circumstances, be expected to know, might give rise to a Claim against the Insured, provided always that:

- 2.9.1 We were the insurer of the Insured when the Insured first became aware of such fact, matter or circumstance;
- 2.9.2 We continued without interruption to be the insurer of the Insured from the time mentioned in paragraph 2.9.1 above up until the Policy Period;
- 2.9.3 had We been notified by the Insured of such fact, matter or circumstance when the Insured first became aware of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy because the Insured did not notify the fact, matter or circumstance;
- 2.9.4 neither the Claim nor the fact, matter or circumstance has previously been notified to Us or to any other insurer;
- 2.9.5 there is an absence of fraudulent noncompliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances;
- 2.9.6 We may reduce Our liability to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period;
- 2.9.7 if the Insured was entitled to have given notice under any other policy of insurance not issued by Us and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Coverage extension does not apply; and
- 2.9.8 the Indemnity Limit provided for any Claim covered by this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.9.3 above, or under this policy. The terms of this policy otherwise apply.

## 2.10 Run-Off Cover

We agree that, in the event that a Named Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity, then the cover provided under this policy with respect to such Named Insured entity (and any person who is or was an Insured Person of such Named Insured prior to the date on which such Named Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity) will continue until the expiry of the Policy Period or cancellation of this policy, whichever is earlier, provided always that such cover will only apply:

- 2.10.1 under Insuring Clause 1.1.1, to any Claims in respect of any Wrongful Act by the Insured Persons;
- 2.10.2 under Insuring Clause 1.1.2, to any Claims in respect of any Wrongful Act by the Insured Persons, but only when the Named Insured shall be required or permitted to indemnify the Insured Persons pursuant to law, or by reason of any indemnity clause in the trust deed, constitution or memorandum or articles of association of the Named Insured;
- 2.10.3 under Insuring Clause 1.1.3, to any Claims in respect of any Wrongful Act arising out of the conduct of the Professional Business by the Insured;
- 2.10.4 under Insuring Clause 1.1.4, to any Claims in respect of any Wrongful Act by the Named Insured; and
- 2.10.5 where the Wrongful Act referred to in paragraphs 2.10.1 to 2.10.4 above occurred prior to the date on which such Named Insured ceased to exist or operate or was consolidated with, merged into or acquired by another entity;

unless otherwise agreed in writing by Us.

## 2.11 Severability and Non Imputation

Where the Named Insured comprises more than one entity, any conduct on the part of a Named Insured whereby such Named Insured:

- 2.11.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth);
- 2.11.2 made a misrepresentation to Us before this contract of insurance was entered into; and/or
- 2.11.3 failed to comply with any of the terms or conditions of the policy;

will not prejudice the right of any other Named Insured to indemnity as may be provided by this policy. No breach of this policy or knowledge or information possessed by a Named Insured shall be imputed to another Named Insured, provided always that:

- a. such other Named Insured is entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Named Insured;
- b. such other Named Insured will, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct; and
- c. enquiry has been made by each Named Insured, before the contract of insurance was entered into of each other Named Insured and persons who make

up the Named Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 (Cth).

Note: This provision does not limit the duty of disclosure owed by the entities or persons that make up the Named Insured.

## **2.12 Estates and Legal Representatives**

In the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of the Insured Person, We will indemnify the estate, heirs, legal representatives or assignees of an Insured Person in respect of any civil liability of an Insured Person to the extent that the Insured Person would have been covered by Insuring Clauses 1.1.1, 1.1.3 and 1.1.5 and 1.1.8 if the Insured Person was alive, had capacity or was not insolvent or bankrupt provided always that such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply.

## **2.13 Reinstatement of the Indemnity Limit**

If the Indemnity Limit is partially reduced or exhausted by any Claim, and/or Defence Costs, Fidelity Loss, Crisis Loss, Tax Audit Loss, Professional Fees, costs and expenses or other payments (subject to any sub limits being limited in the aggregate) then We will reinstate the Indemnity Limit for any subsequent Claims covered by all Insuring Clauses provided always that:

- 2.13.1 such reinstatement shall only apply to subsequent Claims, Defence Costs, Fidelity Loss, Crisis Loss, Professional Fees, costs and expenses that are totally unrelated or unconnected to the Claim, Claims and/or costs and expenses that reduced or exhausted the Indemnity Limit; and
- 2.13.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims, costs and expenses.

## **2.14 Additional Insured Persons Limit**

In the event of payment exhausting the Indemnity Limit (including any reinstatement provided under clause 2.13), the limits of liability of any other policies operating in excess of this Policy and all other sources of indemnification available to an Insured Person (including any reinstatement under Clause 2.13), then We will pay to, or on behalf of an Insured Person, any civil liability resulting from a Claim subject to a maximum limit of \$5,000,000 in the aggregate or the Indemnity Limit of this Policy, whichever is the lesser.

The Additional Insured Persons Limit shall only apply in

respect of Claims covered under Insuring Clause 1.1.1 which are subsequent to, and completely unrelated and unconnected to, the Claim or Claims or the underlying facts and matters that led to, the exhaustion of the Indemnity Limit and shall not apply to the sub limits which are expressed to be in the aggregate.

The cover provided by this extension is not subject to any Excess.

## **2.15 Extradition Costs**

We will pay on behalf of any Named Person the reasonable costs, charges or fees resulting from any Named Person lawfully opposing, challenging, resisting or defending against any Extradition Proceeding that the Insured Person first became aware of during the Policy Period.

Provided that the maximum amount payable under this extension 2.15 is \$250,000 in the aggregate.

## **2.16 Pollution Investigation and Defence Costs**

Notwithstanding Exclusion 5.5 - Asbestos, Toxic Mould and Pollution and Exclusion 5.9 - Bodily Injury and Property Damage, We will pay on behalf of the Insured and/or any Insured Person:

- a. Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against the Insured and notified to Us during the Policy Period based on Pollution which results from a Wrongful Act; and
- b. Investigation Costs and Expenses;

where the subject matter of the Investigation is in connection with:

- i. alleged or actual Pollution; or
- ii. actual or alleged misrepresentation of, or failing to disclose information related to global warming, climate change or greenhouse gas emissions.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

## **2.17 Retirement of Insured Person**

If this policy is amended, terminated, not renewed or replaced with another policy which does not provide cover for an Insured Person that has retired or left the employ or service of the Named Insured, then this

policy will be extended to include cover for such Insured Person for a 7 year period following expiry of the Policy Period in respect of any Investigation or Claims made for a Wrongful Act committed or alleged to have been committed prior to them ceasing to act as an Insured Person.

This Extension does not apply however where the Insured Person has left the Named Insured as a result of:

- a. the merger, acquisition, insolvency, liquidation, bankruptcy, receivership or administration of the Named Insured; or
- b. the disqualification of an Insured Person from holding the position with the Named Insured.

## Extensions to Specific Insuring Clauses

### 2.18 Defamation, Libel and Slander

The cover provided by Insuring Clauses 1.1.1 to 1.1.4 extends to any Claim made as a direct consequence of any inadvertent defamation, libel or slander by the Insured arising out of the conduct of the Professional Business.

### 2.19 Occupational Health & Safety

Notwithstanding Exclusion 5.9 - Bodily Injury and/or Property Damage, the cover provided by Insuring Clauses 1.1.1 to 1.1.4 extends to include:

- a. Defence Costs, civil fines and pecuniary penalties first made against the Insured and notified to Us during the Policy Period and
- b. Investigation Costs and Expenses; and
- c. Crisis Consultancy Expenses and Public Relations Expenses;

in respect of any Claim made on the Insured for a Wrongful Act in connection with an alleged breach or violation of any occupational health and safety legislation. This extension includes such costs where there is any actual or alleged involuntary manslaughter (including corporate manslaughter or grossly negligent manslaughter).

For the purpose of this extension only, Investigation Costs and Expenses also includes necessary and reasonable third party costs, charges and expenses (other than regular or overtime wages, salaries, fees or benefits of an Insured Person) incurred with our prior written consent, in representing and assisting the Named Insured at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to the Named Insured and is notified to Us during the Period

of Insurance.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

### 2.20 Fiduciary Duty

The cover provided by Insuring Clause 1.1.1 extends to any Claim made against the Insured in direct consequence of a breach of fiduciary duty owed by the Insured to a Client, customer, employee or volunteer of the Named Insured.

### 2.21 Preservation of Indemnity Rights

The cover under Insuring Clause 1.1.1 extends to indemnify any Insured Person who is unable to obtain the full benefit of a right to indemnity against the Named Insured to which he or she is entitled, by reason of the Named Insured:

- a. being prohibited to provide such indemnity in its Articles of Association, charter, bylaws, contract or similar documents; or
- b. being legally prohibited to provide indemnity; or
- c. suffering insolvency, liquidation, receivership or administration and having insufficient funds available so as to indemnify an Insured Person;

then it is hereby agreed that We shall indemnify any Insured Person against civil liability arising from any Claim, up to the Indemnity Limit to the extent it has not been reduced by any current Claim or earlier Claim.

The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with the Insured Person and shall include the production of documentary evidence of assets and liabilities of the Named Insured and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

No Excess will be payable under this Extension by an Insured Person.

### 2.22 Tax Liability

The cover under Insuring Clause 1.1.1 extends to indemnify any Insured Person for any personal liability arising from the unpaid taxes of the Named Insured due to the Named Insured's Financial Impairment, except for any superannuation guarantee obligation.

## 2.23 Deprivation of Assets or Liberties

The cover under Insuring Clause 1.1.1 extends to include any reasonable and necessary fees, costs, charges and expenses incurred by an Insured Person with Our prior written consent (such consent not to be unreasonably withheld or delayed) in defending or challenging any proceeding by any regulator, government, administrative or self-regulatory body or agency seeking an order for:

- a. the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such Insured Person;
- b. a charge over real property or personal assets of such Insured Person;
- c. a temporary or permanent prohibition on or disqualification of such Insured Person from holding the office of or performing the function of a director or officer (or equivalent) of any entity or from managing a Named Insured;
- d. the restriction of such Insured Person's liberty to a specified domestic residence or official detention;
- e. a prohibition on such Insured Person departing a country; or
- f. the deportation of such Insured Person following revocation of otherwise proper, current and valid immigration status for any reason other than such Insured Person's conviction of a crime; and

arising out of the Insured Person's duties with the Named Insured.

## 2.24 Vicarious Liability

The cover under Insuring Clause 1.1.3 extends to indemnify the Insured against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim based upon or attributable to the Insured's non-delegable duty and/or vicarious liability in respect of the provision of services by any third party contracted:

- i. Medical Professional; or
- ii. Healthcare Professional; or
- iii. Other consultant, sub-consultant or contractor other than as defined under "Insured Person" g and Automatic Extension 2.28;

in the conduct of the Professional Business.

Provided always that:

- a. throughout the Policy Period all third party contracted Medical Professionals, Healthcare

Professionals or other such professional consultant, sub-consultant or contractor covered under this extension are required to maintain their own insurance for any breach of professional duty, error or omission and evidence of this is obtained and kept on record by the Insured;

- b. We will not indemnify third party contracted Medical Professionals, Healthcare Professionals or other such professional consultant, sub-consultant or contractor in respect to their own liability, nor will we be prevented from seeking recovery from any such party.

## 2.25 Competition and Consumer Legislation

The cover provided under Insuring Clause 1.1.3 extends to indemnify the Insured against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim under the terms of the Competition and Consumer Act 2010 (Commonwealth) or similar Fair Trading legislation in other States or territories, and which arises from misleading or deceptive or unconscionable conduct (not being deliberate or fraudulent conduct).

Provided that:

- a. this extension of indemnity will not include Claims made under the penal or criminal provisions of those Acts or legislation; and
- b. the conduct arises from a Wrongful Act indemnified by Insuring Clause 1.1.3.

## 2.26 Loss of or Damage to Documents

The cover provided under Insuring Clause 1.1.3 extends to indemnify the Insured for reasonable and necessary costs and expenses incurred by the Insured (although not the Insured's own time) in replacing, restoring or reconstituting Documents due to a physical loss of or damage or deprivation of any Documents that are the property of the Insured or are in the Insured's care, custody or control in the conduct of the Professional Business and where such loss or damage is discovered and is notified to Us during the Policy Period.

The cover provided by this extension is not subject to Claims Condition 6.6 or Exclusion 5.9 - Bodily Injury and Property Damage.



## 2.27 Infringement of Copyright or Patents

The cover provided under Insuring Clause 1.1.3 extends to any Claim made as a direct consequence of any inadvertent plagiarism, infringement or alleged inadvertent infringement of any copyright, registered designs or patents or other intellectual property rights arising out of the conduct of the Professional Business.

The cover provided by this extension is not subject to Exclusion 5.13 - Infringement of Intellectual Property Rights.

## 2.28 Appointed Consultants and Sub-Consultants

Insuring Clause 1.1.3 provides cover for any Claim against the Named Insured in respect of the Named Insured's civil liability directly arising out any act, error or omission of any appointed sub-consultant in the conduct of the Professional Business.

We will indemnify any appointed sub-consultant as if they were an employee of the Named Insured, provided always that:

- a. at least 90% of such sub-consultant's income in the previous twelve (12) months to the inception date of this policy, or reasonably anticipated in the next twelve (12) months, is derived from the Named Insured;
- b. such sub-consultant at the time the conduct that gave rise to the Claim was acting under the direct control or supervision of a principal, partner, director, employee or volunteer of the Named Insured and in accordance with the Named Insured's standard operating and risk management procedures; and
- c. cover afforded under this extension will only apply in respect of an act, error or omission of the sub-consultant in the conduct of the Professional Business.

## 2.29 Contractual Liability Defence Costs

Insuring Clause 1.1.3 provides cover for any Claim against the Insured in respect of any Contractual Liability in the conduct of the Professional Business.

Notwithstanding Exclusion 5.10 The cover provided by Insuring Clauses 1.1.1 to 1.1.8 extends to any Claim made as a direct consequence of any alleged breach of express written contract or agreement.

Provided that the maximum amount payable under this extension 2.29 is \$250,000 in the aggregate.

## 2.30 Joint Venture / Consortium

Insuring Clause 1.1.3 provides cover for:

- 2.30.1 any Claim against the Insured arising out of the acts, errors or omissions of the Insured in the conduct of the Professional Business as part of any joint venture; and
- 2.30.2 the Insured's civil liability, to pay compensation, whether jointly or severally, arising from a Claim against any joint venture entity in respect of whose conduct the Insured is legally liable; provided always that:
  - a. such conduct would have been covered by this policy if it had been the conduct of the Insured;
  - b. such conduct occurred whilst the Named Insured was a member of the joint venture or consortium; and
  - c. the Named Insured has specifically declared in writing to Us, prior to entering into this policy (whether in response to a specific question in the proposal form or otherwise), its membership of the joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the Named Insured's proportion).

## 2.31 Online Medicare Benefit Fraud

The cover provided under Insuring Clause 1.1.3 extends to indemnify the Insured against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim based upon or attributable to the Australian Government Department of Human Services (or equivalent Government Department) having transferred or paid any benefit or funds to any person (other than the Insured) who had no legal entitlement to such benefit or funds as the direct result of the dishonest or fraudulent input, deletion or modification of data on any Government hosted online system by an Employee; provided always that:

- a. We will not indemnify the Insured for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- b. We will not indemnify any Insured committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- c. all loss resulting from a single act or any number



of acts of the same Named Insured within the Policy Period will be treated as a single loss and the applicable Indemnity Limit and Excess will apply;

- d. The maximum aggregate amount payable under this extension is \$250,000.

## 2.32 Fraud and Dishonesty

The cover provided under Insuring Clause 1.1.3 extends to indemnify the Insured against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim which arises from, or is contributed to, by any dishonest, fraudulent, criminal or malicious act or omissions of any Insured Person.

Provided that we will not indemnify the Named Insured:

- a. in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;
- b. in respect of any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured Person;
- c. where any Insured Person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission is a sole principal or director of the Named Insured;
- d. where all principals, partners or directors of the Named Insured are persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

We will not indemnify any Insured Person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

Exclusion 5.11 - Fraud, Dishonest Criminal or Intentional Loss Damage or Injury does not apply to the cover provided by this extension.

## 2.33 Outside Directorships (including run off cover)

The Named Insured (under Insuring Clause 1.1.2) and the Insured Persons (under Insuring Clause 1.1.1) are indemnified for any Claim first made against an Insured Person who was, is or becomes at the request of the Named Insured a director, governor, councillor, officer, secretary, trustee, committee member or equivalent position in any Outside Entity.

Coverage afforded under this extension shall be specifically in excess of any indemnity provided by the Outside

Entity as well as any insurance contract in force or available from the Outside Entity.

The cover provided by this extension is not subject to Claims Condition 6.6.

## 2.34 Spousal Liability Cover

Under Insuring Clauses 1.1.1 and 1.1.3, the Spouse of an Insured Person is indemnified by Us for any Claim first made against the Spouse during the Policy Period arising out of a Wrongful Act committed by the Insured Person so long as the Claim is only made because the Spouse is the Spouse of the Insured Person and relates to property either held as joint tenants or property that was transferred to the Spouse by the Insured Person solely for lawful purposes.

## 2.35 Third Party Employment Practices Cover

Insuring Clause 1.1.5 extends to include an Employment Practices Wrongful Act committed, attempted or allegedly committed or attempted against any natural person who is an applicant for employment, Client, service provider, supplier or invitee of the Named Insured.

## 2.36 Fidelity and Third Party Crime Extensions

The following automatic extensions apply specifically to Insuring Clause 1.1.6:

- 2.36.1 the insurance provided under Insuring Clause 1.1.6 applies to any Direct Financial Loss sustained in consequence of any Insured Person Theft or theft or fraudulent act committed by a Third Party committed during the currency of any previous policy provided that:
  - a. the discovery period in such previous policy has expired; and
  - b. the Direct Financial Loss is discovered within the Policy Period.
- 2.36.2 the Direct Financial Loss will fall within and not be in addition to the Insured Amount shown in the Schedule.
- 2.36.3 the definition of Named Insured under Insuring Clause 1.1.6 is extended to include:
  - a. any superannuation or pension scheme formed exclusively for the benefit of employees, but does not include any scheme that is administered by a professional funds manager; and
  - b. any canteen, social and/or sporting clubs or

educational, welfare and child care facilities, which are primarily for the benefit of employees or volunteers.

- 2.36.4 where We have agreed to indemnify the Named Insured for a Direct Financial Loss, We will also pay for the reasonable and necessary third party costs (excluding overtime wages, salaries and other internal costs incurred in the normal course of business) incurred with Our prior written consent to investigate and substantiate the amount of any Direct Financial Loss.

Provided that maximum amount payable under this Extension is \$100,000.

- 2.36.5 the insurance provided under Insuring Clause 1.1.6 applies to any Direct Financial Loss where the Named Insured is unable to identify the specific principal, partner, trustee, director, officer, employee or volunteer whose conduct gave rise to the loss, provided the Named Insured can provide reasonable evidence to prove that the Direct Financial Loss was in fact due to the fraud or dishonesty of one or more principal, partner, trustee, director, officer, employee, volunteer or Third Party.

- 2.36.6 where We have agreed to indemnify the Named Insured for a Fidelity Loss, We will also pay for the reasonable and necessary costs incurred with Our prior written consent to reproduce or replicate damaged or destroyed electronic data or information or computer programs directly arising from such Fidelity Loss.

If such electronic Data or computer programs cannot be duplicated from other electronic Data or computer programs then We will indemnify the Company for reasonable costs incurred to purchase the replacement computer program software, or if it cannot be purchased, for the time taken for computer programmers, technical experts or consultants to restore such electronic Data or computer programs to substantially the same level of operational capability existing immediately before the covered loss.

Provided that maximum amount payable under this clause 2.36.6 is \$25,000 or fifteen percent (15%) of the Fidelity Loss whichever is the lesser.

- 2.36.7 the insurance provided under Insuring Clause 1.1.6 applies to any Direct Financial Loss sustained in consequence of:

- a. the acceptance in good faith and in the ordinary course of business of any counterfeit currency;
- b. the fraudulent or illegal misuse of any corporate financial transaction card;
- c. the fraudulent or dishonest misuse or manipulation of the Insured's computer systems, programs or funds transfer systems owned or operated by the Insured.

Our total aggregate sub-limit of liability for all claims in the aggregate under clause 2.36.7 shall not exceed \$100,000.

- 2.36.8 the insurance provided under Insuring Clause 1.1.6 applies to any Direct Financial Loss sustained by a Client in consequence of any Insured Person Theft or theft or fraudulent act committed by an employee or volunteer of the Named Insured not in collusion with such Client's directors or employees.

Provided that maximum amount payable under this clause 2.36.8 is \$25,000.

## 2.37 Identity Fraud Expenses

In the event that a party other than an Insured Person fraudulently represents themselves as a representative of the Insured and enters into an agreement on behalf of the Insured with a third party, and such third party seeks to enforce the agreement, We will indemnify the Insured for reasonable costs and expenses incurred by the Insured with our prior written consent (not to be unreasonably withheld) to establish that a fraudulent misrepresentation has occurred.

Provided that maximum amount payable under this clause 2.37 is \$50,000.

## 2.38 Tax Audit Extensions

The following automatic extensions apply specifically to Insuring Clause 1.1.9:

- 2.38.1 We will reimburse the Insured for travel and accommodation expenses incurred by you or your employees if they are reasonably and necessarily incurred to substantiate the claim.

## 2.39 Employment Practices Specialist Advice

Any Insured that has arranged or renewed an Association Liability policy with Us is entitled to access our Employment Practices Specialist Advice service. Under this service the Insured has access to legal and claims specialist resources provided by

Berkley Insurance Australia and/or their legal panel.

The service provide the Insured with up to sixty (60) minutes of verbal advice and guidance during business hours in relation to:

- a. employment legislation, standards or fair work practices; and/or
- b. occupational health and safety legislation.  
Our total aggregate sub-limit of liability for all claims in the aggregate under clause 2.36.7 c shall not exceed \$100,000.
- a. employment legislation, standards or fair work practices; and/or
- b. occupational health and safety legislation.

### 3. Optional Extensions

Only applicable to this policy if the Schedule shows You have elected this Optional Extension and paid any additional premium required by Us.

#### 3.1 Extended Discovery Period

If this policy is terminated or not renewed or replaced at the end of the Policy Period (for any reason other than non-payment of premium) then the Insured will be entitled to notify Us of a Claim or Investigation for:

- a. a period of 90 days immediately following the expiry of the Policy Period without payment of any additional premium; or
- b. a period of 365 days immediately following the expiry of the Policy Period subject to payment of an additional premium representing 100% of the expiring annualised premium.

Provided that:

- i. any such Claim or Investigation is based on a Wrongful Act by an Insured Person, or arising out of the conduct of the Professional Business by the Insured, an Employment Practices Wrongful Act or Fidelity Loss committed prior to the expiry of the Policy Period;
- ii. The Insured must request this Extended Discovery Period in writing within 30 days after expiry of the Policy Period; and
- iii. An offer by Us of renewal terms, conditions, Indemnity Limit or premium different to those of this policy does not constitute non renewal for the purposes of this Optional Extension.

Once an Extended Discovery Period is in effect, the entire amount of any additional premium payable is deemed fully earned at its commencement, is payable within 30 days of the receipt by Us of the request and is non-refundable.

#### 3.2 Multi Year Run Off

In the event that, during the Policy Period, a Named Insured entity merges with or is taken over by another entity, or is sold or wound up, then We will make available to such Named Insured entity (and any person who is or was a principal, partner, director or employee of such Named Insured prior to the effective date of such merger, takeover, sale or winding up) an extension to the Policy Period for a period of up to an additional six (6) years and provide indemnity in respect of Investigations or Claims first made during that additional period provided always that:

- 3.2.1 such Named Insured shall give Us written notice of such merger, takeover, sale or winding up as soon as reasonably practicable and during the Policy Period;
- 3.2.2 Our offer to extend cover may be subject to such additional terms, conditions and premium as We may reasonably impose having regard to the nature of the risk to be assumed by Us;
- 3.2.3 such extension of the Policy Period will not take effect until Our offer is accepted by such Named Insured; and
- 3.2.4 such extension will only apply:
  - 3.2.4.1 under Insuring Clause 1.1.1, to any Investigations Claims in respect of any Wrongful Act by the Insured Persons in the capacity of principal, partner, trustee, director or officer of the Named Insured;
  - 3.2.4.2 under Insuring Clause 1.1.2, to any Investigations or Claims in respect of any Wrongful Act by the Insured Persons in the capacity of principal, partner, trustee, director or officer of the Named Insured, but only when the Named Insured shall be required or permitted to indemnify the Insured Persons pursuant to law, or by reason of any indemnity clause in the trust deed, constitution or memorandum or articles of association of the Named Insured;
  - 3.2.4.3 under Insuring Clause 1.1.3, to any Investigations Claims in respect of any Wrongful Act arising out of the conduct of the Professional Business by the Insured;
  - 3.2.4.4 under Insuring Clause 1.1.4, to any Investigations or Claims in respect of any Wrongful Act by the Named Insured; and
  - 3.2.4.5 where the Wrongful Act referred to in paragraphs 3.2.4.1 to 3.2.4.4 above occurred prior to the effective date of such merger, takeover, sale or winding up.

In the event the Insured does not accept the terms offered or the amount of any additional premium under clause 3.2.2, the Insured may cancel the Policy in accordance with clause 7.3.

Note: The Indemnity Limit is not increased by this extension notwithstanding the extended Policy Period.

### 3.3 Malpractice

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Policy Period caused by or arising out of the rendering or administering or failure to render or administer services as a Medical Professional or Healthcare Professional in the conduct of the Professional Business.

Where any party insured under this Optional Extension is also entitled to indemnity under another insurance policy issued by Us, our maximum Indemnity Limit shall be equivalent to the highest under any policy.

Exclusion 5.9 - Bodily Injury and Property Damage and Exclusion 5.12 - Professional Duty will not apply where this Optional Extension has been selected.

### 3.4 Clinical Trials

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Policy Period caused by or arising out of the Insured's involvement in any Clinical Trial provided always that:

- a. the Insured has provided Us with a completed clinical trials questionnaire prior to commencement of the Clinical Trial; and
- b. the particular Clinical Trial giving rise to the Claim has been agreed to by Us prior to commencement of the Policy Period and the particular Clinical Trial is listed in the Schedule.

Exclusion 5.21.3 will not apply where this Optional Extension has been selected.

### 3.5 Cyber Risk

#### 3.5.1 Third Party Cyber Liability

We will indemnify the Insured for civil liability to pay compensation if, during the Policy Period and in the course of the Insured's business, any party brings a Claim against the Insured arising from:

- 3.5.1.1 the Insured's unintentional transmission of a Computer Virus or logic bomb, to any third party;
- 3.5.1.2 the Insured's unauthorised collection, misuse, loss, theft or disclosure of Personal Information;

3.5.1.3 a Hacker's use of the Insured's encrypted electronic signature, encrypted electronic certificate, Website or email where:

- a. there was a clear intention to cause the Insured to sustain loss; or
- b. for the Hacker to obtain personal gain through such use.

3.5.1.4 the content of the Insured's Website (including domain name, metatags, hyperlinks and the marketing and advertising of the Insured's business on its Website), including additions, deletions or alterations made by a Hacker, and:

- a. are due to the Insured's infringement of any intellectual property rights, including any trademark, copyright, passing off, linking to or framing of another page;
- b. are due to any defamatory statement on the Insured's Website or email including statements concerning the Insured's former, current or potential Clients or business competitor;
- c. are due to the Insured's infringement of any right to privacy or breach of confidence concerning the Insured's former, current or potential Clients or business competitor.

3.5.1.5 the physical theft of the Insured's hardware by a third party;

3.5.1.6 the theft of an access code from the Insured's premises, Computer System, employee or volunteer by electronic or non-electronic means.

but are not arising out of the provision of Information Technology Services or Information Technology Products by the Insured.

#### 3.5.2 Hacker Damage to the Insured's Computer System or Website

3.5.2.1 We will pay reasonable third party costs and expenses incurred by the Insured with Our prior written consent to repair or replace the damaged, destroyed or altered part of the Insured's Computer System or Website if, during the Policy Period, a Hacker damages, destroys or alters the Insured's Computer System or Website, PROVIDED THAT We agree to pay such third party costs and expenses to repair or replace the damaged, destroyed or altered part of the Insured's Computer System or Website to the same or equivalent standard with the same contents or as near as reasonably practicable as immediately before such Computer System or Website was damaged, destroyed or altered.



3.5.2.2 We will also pay any reasonable and necessary expenses incurred by the Insured with Our prior written consent for the design and implementation of a public relations campaign to contact any person who attempted to use the Website.

### 3.5.3 Cyber Extortion Loss

We will indemnify the Insured against all Extortion Loss that the Insured incurs solely as a result of an Extortion Threat made by a Hacker.

The Insured must use its best efforts at all times to not disclose to anyone the existence of the insurance for Extortion Loss without Our prior written consent. We will allow the Insured to notify the police or other reasonable law enforcement authorities of any Extortion Threat.

### 3.5.4 First Party Notification Expenses

We will indemnify the Insured for the reasonable costs and expenses in respect of the identification, collection of information, preparation for and notification to any third party affected by the Insured's unauthorised collection or misuse, loss, theft or disclosure of sensitive information that is confidential or subject to statutory restrictions that arises during the Policy Period.

Our total aggregate sub-limit of liability for all claims under this clause 3.5.4 First Party Notification Expenses shall not exceed \$50,000. This sub limit is part of and not in addition to the maximum amount payable for Optional Extension 3.5.

The maximum amount payable in the aggregate in connection with all Claims under Optional Extension 3.5 is \$100,000.

A separate Excess of \$1,000 inclusive of Defence Costs shall apply under this extension.

### 3.6 Government Audits

The policy is endorsed to amend Insuring Clause 1.1.9 to include an inquiry relating to any return legally required to be and actually lodged with an Australian Commonwealth, Federal or State government or government authority or government agency by the Named Insured.

All policy definitions in the policy that relate specifically to Insuring Clause 1.1.9 including Authority and Tax Audit are extended to include any such inquiry.

### 3.7 Insolvency

Exclusion 5.2 is deleted.

### 3.8 Additional Reinstatement of the Indemnity Limit

Clause 2.13.2 of Automatic Extension 2.13 is amended as follows:

2.13.2 We will be liable for no more than three times the Indemnity Limit in the aggregate in respect of all Claims, costs and expenses provided always that this Optional Extension will only apply where the Indemnity Limit is no more than \$10,000,000.

## 4. Definitions

The following definitions shall apply to all sections of this Policy.

**“Act of Terrorism”** means an activity that:

- a. involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and
- b. appears to be intended to:
- c. intimidate or coerce a civilian population;
- d. disrupt any segment of the economy of a government de jure or de facto, state or country;
- e. overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
- f. affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

**“Bail Bond Costs”** means the reasonable fee or premium (not including any collateral) for a bond or other financial instrument to guarantee an Insured Person’s contingent obligation for bail or equivalent, required by a court in respect of an Extradition Proceeding including the premium paid for appeal, attachment or similar bonds.

**“Claim”** means:

- a. any writ, application, summons or other originating legal process, arbitration, mediation, conciliation or alternative dispute resolution proceeding, cross claim or counter claim issued against or served on the Insured claiming damages or other compensatory relief;
- b. the positive assertion in writing of a legal entitlement to damages or other compensatory relief in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue such legal entitlement;
- c. any exemplary or punitive damages unless the Company is legally prohibited from paying such damages or fines or penalties in the jurisdiction in which the Claim is determined;
- d. for the purpose of insuring Clause 1.1.8, any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty;
- e. for the purpose of Insuring Clause 1.1.5 any administrative, regulatory or tribunal proceeding or charge including any such proceeding commenced by the Fair Work Ombudsman or Human Rights Commission or any similar regulatory agency with jurisdiction over the Named Insured’s employment practices; or
- f. Any Extradition Proceeding.

**“Client”** means any individual or organisation to whom the Insured provides goods or services, irrespective of whether these goods or services are provided for a fee.

**“Clinical Trial”** means any research, study or trial conducted with a medical and/or scientific purpose, including but not limited to, treatment, prevention, diagnostic, screening and quality of life trials and/or research.

**“Computer System”** means an information technology system made up of a network of one or more items of computer hardware or software and the electronic data stored thereupon, that share a central storage system and various peripheral devices that are proprietary to or licensed to the Insured.

**“Computer Virus”** means computer programming code which impairs, denies or adversely affects a Computer System or Website and that is maliciously introduced without the Insured’s permission or knowledge. This includes, but is not limited to malware, spyware, crimeware, worms, rootkits, trojans, dishonest adware and other malicious software.

**“Contractual Liability”** means liability which attaches by virtue of a contract or agreement but only to the extent to which it would have attached in the absence of such contract or agreement.

**“Cooperate”** means that the Insured:

- a. assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available;
- b. will have adequate internal systems in place, which will allow ready access to material information; and
- c. will at all times and at its own cost give to Us or Our duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

**“Crisis Damage”** means

- a. a decrease of more than 30% of the total consolidated annual revenues compared to the most recent financial year end of the Named Insured; or
- b. a drop in volunteer numbers of more than 30% during the 180 day period following the Crisis Event.

**“Crisis Event”** means any of the following unforeseen events which in the reasonable professional opinion of the managing director or chief executive officer of the Named Insured will most likely cause Crisis Damage:

- a. where a Claim has been made against the Insured for which cover is available under this policy (or where the insured has notified facts which may give rise to a future Claim);
- b. the sudden, unexpected disability or death of any Insured Person;
- c. loss of a major customer, supplier, contract, government funding or credit facility;
- d. significant destruction or damage to tangible property of the Insured;
- e. an act that happens on the premises of the Insured that causes injury or death to an Insured Person or emotional distress to Clients of the Insured or Insured Persons who witnessed the act;
- f. a recall or boycott of any product;
- g. the first apparent unauthorised intrusion into any Insured’s computer facilities;
- h. any criminal or fraudulent behaviour;
- i. any Investigation;
- j. loss of intellectual property acquired by the Insured including trademarks, patents and copyright;

but does not include an event that affects the Insured’s industry in general rather than the Insured specifically.

**“Crisis Loss”** means the reasonable fees, costs and expenses incurred by the Insured with Our prior written consent (not to be unreasonably withheld or unreasonably delayed), of any public relations firm, crisis management consultant or executive search firm (excluding any placement fee or charge) retained by the Insured to advise them on the best response and strategies to minimise any impact on the Insured’s operations and reputation.

**“Defence Costs”** means all reasonable and necessary costs and expenses incurred in the investigation, reporting on, defence or settlement of any Claim in respect of which We are liable to indemnify the Insured under this policy. This also includes reporting in writing to Us on the investigation, defence or settlement of any Claim, including attendance by an Insured Person at any official inquiry.

**“Direct Financial Loss”** means financial loss sustained by the Named Insured caused by the loss of:

- a. local or foreign currency, coins bank notes, cheques, postal orders, money orders and bullion;

- b. shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trust and other negotiable and non-negotiable instruments;
- c. physical and tangible property

which is:

- i. owned or leased by the Named Insured;
- ii. in the care, custody or control of the Named Insured and/or for which the Named Insured is legally liable.

Direct Financial Loss does not mean regular or overtime wages, salaries or other remuneration benefits earned in the normal course of employment.

**“Documents”** means project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and will include computer software and systems records (electronic data will be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, stamps, coins, bank or currency notes and other negotiable instruments.

**“Employment Practice Wrongful Act”** means any actual or alleged breach of duty, error, act, omission, neglect or misleading statement by an Insured in connection with any wrongful, unlawful or unfair:

- a. discharge or termination of employment, demotion, constructive dismissal, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote, negligent evaluation, denial of natural justice;
- b. breach of an oral, written or implied term in any employment contract or quasi-employment contract;
- c. employment-related misrepresentation, false advertising, invasion of privacy, breach of data protection legislation, libel, slander, humiliation and defamation;
- d. violation of employment discrimination laws (including bullying, sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual preference or orientation, religion, maternity, pregnancy, HIV status, age and disability or other status protected under applicable law);
- e. violation or non-compliance with legislation regulating working hours;
- f. failure to grant tenure, adopt or adhere to

- adequate workplace or employment policies and procedures, furnish accurate job references;
- g. an adverse change in the terms and conditions of employment in Retaliation for an individual's exercise of his or her rights under law, support for the rights of others including any whistleblowers and others;
- h. employment-related wrongful infliction of mental anguish or emotional distress.

**"Excess"** means the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim or Investigation made against the Insured.

If a single Wrongful Act or act or a series of Wrongful Acts or acts which are attributable to the one originating source or underlying cause give rise to a claim, then all claims arising out of Wrongful Acts or acts attributable to the same originating source or underlying cause shall be treated as a single claim and a single retention shall apply to such claims.

No Excess will apply to any Claim (and We will reimburse any Defence Costs already paid by the Insured) if:

- a. the Claim is dismissed without any payments made by or on behalf of the Insured; or
- b. there is a final judgement of no liability in favour of the Insured; or
- c. there is a final judgement of no liability obtained after trial, in favour of the Insured, after the exhaustion of all appeals.

The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST.

**"Extradition Proceeding"** means

- a. A request for extradition of any Named Insured, a warrant for the arrest of any Named Insured or other proceedings commenced by a writ, complaint, summons or other originating process against any Named Insured under the provisions of the Extradition Act 1988 (Cth) and/or any associated regulations; and
- b. any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); and
- c. the equivalent of the above in any other jurisdiction not excluded by this section.

A Wrongful Act of an Insured Person is not required for cover for an Extradition Proceeding.

**"Extortion Loss"** means any:

- a. amounts paid by the Insured, with Our prior written consent, to a third party to prevent or end an Extortion Threat; or
- b. reasonable costs and expenses paid by the Insured with Our prior written consent, to procure or provide goods or services by a third party, to prevent or end an Extortion Threat; or
- c. reasonable costs and expenses to pay for an appropriately qualified and independent expert to conduct an investigation to determine the cause of an Extortion Threat.

**"Extortion Threat"** means any threat or series of connected threats communicated to the Insured demanding money, goods or services to prevent or cease damaging, interrupting, destroying or altering the Insured's Computer System and/or Website and/or to divulge, disseminate or improperly utilise any sensitive information.

**"Fidelity Loss"** means financial loss sustained by the Named Insured caused by the loss of:

- a. local or foreign currency, coins bank notes, cheques, postal orders, money orders and bullion;
- b. shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trust and other negotiable and non-negotiable instruments;
- c. physical and tangible property

which is:

- i. owned or leased by the Named Insured; or
- ii. in the care, custody or control of the Named Insured and/or for which the Named Insured is legally liable.

Fidelity Loss does not mean regular or overtime wages, salaries or other remuneration benefits earned in the normal course of employment.

**"Fine or Penalty"** means:

- a. a penalty imposed upon the Insured by any regulatory authority arising from any actual or alleged Wrongful Act; or
- b. any compensatory civil penalty; or

- c. any Defence Costs incurred with Our consent in the defence or settlement of any Fine or Penalty.

**“Hacker”** means a person or persons who maliciously gains unauthorised access to the Insured’s Computer System and/or Website via the internet or any other external electronic link or other devices such as USBs, laptops or Bring Your Own Devices (BYOD) solely by electronically circumventing the Insured’s information technology security systems.

Hacker does not include:

- a. any director, partner, principal or officer of the Insured; and/or
- b. any sub-contractor, independent contractor or third party lawfully on the Insured’s premises without express permission; and/or a member of the management committee of the Named Insured;
- c. a person or persons who gain(s) access directly through any computer, BYOD, BYOPC, BYOT or the Insured’s Computer System or being in possession of any password lawfully obtained or other security code.
- d. any volunteer of the Named Insured.

**“Healthcare Professional”** means any allied health provider including but not limited to acupuncturists, audiologists, Chinese medicine practitioners, chiropractors, dietitians, nurses, nutritionists, occupational therapists, osteopaths, pharmacists, pathologist, physiotherapists, podiatrists, psychologists, and speech pathologists.

**“Indemnity Limit”** means the sum shown in the Schedule which is available to indemnify the Insured in respect of any one Investigation or Claim and in the aggregate during the Policy Period subject to Automatic Extension 2.13 - Reinstatement of the Indemnity Limit.

If the Insured is comprised of more than one entity, the Indemnity Limit applies to the group of such entities as a whole.

Any amounts recovered by Us (net of Our reasonable expenses associated with such recovery) following a paid Claim shall proportionately reduce any impairment of the Indemnity Limit.

**“Information Technology Products”** means any information technology product including electronic equipment, communication equipment, computer hardware, computer firmware, computer software, or other electronic computer device, designed, specified,

manufactured, installed, sold, supplied, licensed, handled or distributed by the Insured.

**“Information Technology Services”** means work or advice in relation to information technology including consultancy services, design, specification, training, testing, data processing, data management, project management, project implementation, analysis or maintenance and data hosting services provided by the Insured.

**“Insured”** means:

- a. the Named Insured; and/or
- b. any Insured Person but only in respect of work performed as an Insured Person and on behalf of the Named Insured.

**“Insured Person”** means any person who is was or becomes:

- a. a principal, partner, secretary, trustee and/or a director or officer of the Named Insured;
- b. a Shadow Director;
- c. a member of the management committee of the Named Insured;
- d. a full time, part-time, temporary or casual employee of the Named Insured;
- e. any intern, work experience persons or volunteers while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities and under the supervision of a director, employee of volunteer of the Insured;
- f. a trustee, director or committee member of any superannuation fund established for the benefit of employees of the Named Insured;
- g. a consultant or sub-consultant engaged under an outsourced contract where at least 90% of such consultant or sub-consultant’s income in the previous twelve (12) months to the inception date of this policy, or reasonably anticipated in the next twelve (12) months, is derived from the Named Insured whilst acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities;
- h. a Bishop, Priest or Deacon of the Named Insured or a member of a religious institution undertaking activities in connection with the Professional Business.

**“Insured Person”** does not mean a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for an Insured Person.



**“Insured Person Theft”** means:

- a. the forgery or alteration of any financial instrument;
- b. the counterfeiting of any money or negotiable instruments, upon which the Insured has relied;
- c. the fraudulent use of any corporate credit, debit or charge card issued to the Named Insured or any Insured Person for business purposes where such card is a Forgery or is the subject of fraudulent alteration provided that the Named Insured or the Insured Person has complied fully with the provisions, conditions and other terms under which the card was issued and provided the Named Insured is legally liable for such Direct Financial Loss;
- d. fraudulent telephonic, facsimile, cable, teletype, electronic, telegraphic or written instructions issued to a financial institution directing the financial institution to pay, deliver, transfer money or negotiable instruments from any account maintained by the Named Insured at such financial institution without the knowledge or consent of the Named Insured.

**“Investigation”** means any formal or official investigation, inquiry, examination or proceeding into the business or activities of the Insured or the conduct of an Insured Person acting on or behalf of a Named Insured which the Insured(s) is/are legally compelled to attend or provide documents by official notice or process.

Investigation also includes any investigation, examination or enquiry by any:

- a. royal commission or coronial enquiry; or
- b. regulatory authority such as the Australian Securities and Investments Commission; or
- c. parliament; or
- d. disciplinary committee of any association or professional body of which the Insured or an Insured Person is a member.

including any internal investigation or inquiry if requested by a regulator established under statute.

**“Investigation Costs and Expenses”** means reasonable fees, costs, charges and expenses incurred with Our prior written consent (such consent not to be unreasonably withheld or delayed):

- a. by or on behalf of the Named Insured or an Insured Person directly in connection with such Insured Person preparing for and attending an Investigation;
- b. for legal representation in relation to an

Investigation;

- c. fees, costs, charges and expenses incurred in relation to a Pre-Investigation Event.

but not including:

- i. remuneration payable to any Insured Person, cost of their time, or costs or overhead of the Named Insured or an Outside Entity, or
- ii. any costs and expenses which relate to any routine regulatory supervision or inspection.

**“Medical Professional”** means any medically qualified and registered practitioner including but not limited to general practitioners, surgeons, cardiologists, obstetricians, anaesthesiologists, medical radiation practitioners, pathologists, dental practitioners, optometrists, psychiatrists, paramedics and midwives including student doctors and medical interns.

**“Named Insured”** means

- a. the person(s), partnership, company, corporation or other entity named as the Named Insured in the Schedule; and/or
- b. any Subsidiary Company in existence at the commencement of the Policy Period; and/or
- c. any superannuation plan, trust or scheme established and maintained solely for the benefit of the Named Insured and its employees.

**“Named Insured”** does not mean a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for a Named Insured.

**“Outside Entity”** means any organisation other than a Named Insured and:

- a. which is a registered not for profit organisation; or
- b. an entity established for community, religious, benevolent or charitable purposes; or
- c. is not a listed entity on any public or private securities exchange anywhere in the world.

**“Personal Information”** means information about an individual whose identity is apparent or can reasonably be ascertained from the information and the collection, storage or use of such information is limited by statute.

**“Policy Period”** means the period shown in the Schedule.

**“Pollution”** means any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which will mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, will include offence caused to any of their senses) into or onto any water, land or air.

**“Pre-investigation Event”** means:

- a. a raid or on-site visit to any Named Insured or Insured Person by any regulator, government, administrative or self-regulatory body or agency that involves the production, review, copying or confiscation of documents or interviews of any Insured Person;
- b. any formal written notification to any regulator, government, administrative or self-regulatory body or agency by the Named Insured or an Insured Person of any suspected material breach of legal or regulatory duty (or where notification is provided to avoid enforcement consequences from delay or failure to provide such notification);
- c. the receipt by a Named Insured, Outside Entity or Insured Person of a formal notice from any regulator, government, administrative or self-regulatory body or agency which legally compels the Named Insured, Outside Entity or Insured Person to conduct an internal inquiry and/or produce documents, answer questions or attend interviews directly as a result of any notification as described in b above.

**“Professional Business”** means the professional services provided by or on behalf of the Named Insured as described in the Schedule including but not limited to:

- a. the promotion and/or advocacy of the Insured and its objectives, areas of focus or interest;
- b. the organisation of any fund raising activities or other events;
- c. any registration, training or accreditation activities;
- d. the publication of any professional or technical standards including the publication and/or sale of any journals and publications.

**“Retaliation”** means any actual or alleged Employment Practices Wrongful Act in response to:

- a. the exercising or attempted exercising of any right that an Insured Person has under employment law;

- b. the refusal of an Insured Person to violate any law or the opposition of any unlawful practice;
- c. any strike action or other lawful industrial action taken by an Insured Person;
- d. the participation or cooperation with an investigation or proceeding (including internal investigations) regarding alleged unlawful actions of the Named Insured;
- e. the disclosure or threat of disclosure by an Insured Person to any employee, officer or director of the Named Insured or any regulator or government agency of any act which is alleged to be a violation of any law or regulation or pursuant to any whistleblowing law or procedures.

**“Retroactive Date”** means the date shown in the Schedule as the Retroactive Date:

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

**“Schedule”** means the document entitled ‘Schedule’ that relates to this insurance.

**“Social Engineering Fraud”** means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

- a. transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;
- b. transferring or delivering any property to another person or entity;
- c. revealing confidential information; or
- d. changing or altering bank account or payment details of any person or entity.

**“Spouse”** means the legally recognised spouse, defacto partner or domestic partner of the Insured Person.

**“Subsidiary Company”** means any entity which the Named Insured directly or indirectly:

- a. holds more than fifty percent (50%) of the issued share capital;
- b. controls the right to appoint or remove a majority of its Board of Directors;
- c. controls a majority of the voting rights;
- d. Any parish, agency or office of the Named Insured;
- e. Any trust or foundation controlled or sponsored by the Named Insured.

**“Third Party”** means any natural person or entity other than an Insured or an Insured Person.

**“We”, “Us”, “Our”** means Community Underwriting Agency Pty Limited (ABN 60 166 234 715 AFS License No 448274) as agent for Berkley Insurance Australia (ABN 53 126 559 706).

**“Website”** means any website including any intranet or extranet over which the Insured has control of content and which the Insured operates in the promotion of the Insured’s business.

**“Wrongful Act”** means any libel, slander or defamation of character, any error, mis-statement, misleading statement, omission, neglect, negligence, breach of duty, breach of statutory duty, breach of trust (including breach of constructive trust), breach of confidentiality, breach of warranty of authority or other act committed, attempted, or allegedly committed on behalf of the Named Insured.

## Specific Tax Audit Definitions

The following conditions apply specifically to Insuring Clause 1.1.9:

**“Authority”** means the Australian Taxation Office, a revenue office of an Australian State or Territory; a Commonwealth, State or Territory government department, body or agency which is duly authorised to conduct a Tax Audit.

**“Designated Tax”** means any tax assessable in accordance with the provisions, as amended, of any legislation of any Authority relating to:

- a. income tax;
- b. payroll tax;

- c. fringe benefits tax;
- d. goods and services tax;
- e. capital gains tax;
- f. superannuation payments;
- g. termination payments Tax;
- h. land tax;
- i. stamp duty;
- j. sales tax; or
- k. any other legislation that is intended to replace any legislation referred to in a) to j) above.

**“Professional Fees”** means fees, costs and disbursements payable to a Tax Agent or professional person (other than the Insured or your employee) in connection with a Tax Audit by an Authority. Professional Fees does not mean any fees, costs or disbursements:

- a. that relate to any subsequent objection lodged with the Authority in respect of a Tax Audit;
- b. incurred after the Tax Audit has been completed; or
- c. incurred after 12 months from the commencement date of the Tax Audit other than when the Insured can demonstrate to Our satisfaction that the delay in completing the Tax Audit was caused primarily by the Authority.

**“Return”** means any return legally required to be, and is actually lodged with, an Australian Commonwealth, Federal or State government or government authority or agency by the Insured or on your behalf.

**“Tax Agent”** means any person who is recognised by the Authority as a registered tax agent, as appropriate to the type of Designated Tax, who prepares returns and statements required by that Authority in respect of the Insured’s liability to pay a Designated Tax, including supervision of the preparation of, and review prior to dispatch of, those returns and statements. Tax Agent does not mean the Insured or a person working for the Insured under a contract of employment.

**“Tax Audit”** means:

- a. the audit of a Return submitted by the Insured or on your behalf in respect of your liability to pay any Designated Tax (including the amount of tax payable) following lodgement of a Return for that Designated Tax;
- b. any notification from an Authority of an intention to undertake a risk review relating to the Insured’s ability to pay any Designated Tax;
- c. any official inquiry, investigation, examination or review in respect of the Named Insured’s liability to pay any Designated Tax (including the amount

of tax payable) following lodgement of a Return for that Designated Tax; or

If an official inquiry, investigation, examination or review referred to in paragraph c) above escalates or results in an audit as referred to in paragraph a) above, then this would be viewed as one Tax Audit for the purposes of Insuring Clause 1.1.9.

For the purpose of Insuring Clause 1.1.9;

- a. the Tax Audit commences at the time the Insured or Your Tax Agent or professional adviser first receive notice of either an audit under paragraph a) above or an inquiry, investigation, examination or review, under paragraph b) above.
- b. the Tax Audit is complete when:
  - i. the auditor has given written notice to that effect;
  - ii. the auditor notifies Us that it has made a concluded decision about your Returns;
  - iii. when the auditor has issued an assessment or amended assessment of your Returns; or
  - iv. in the absence of b) i), b) ii) or b) iii) where Your Tax Agent or professional adviser declares in writing that such an audit has been concluded.
- c. "You" includes any company, firm, partnership or trust in which You hold a 50% or more ownership, interest or shareholding.

## 5. Exclusions

We will not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

### 5.1 Previously Known Claim or Circumstance

any:

- 5.1.1 Claim, Tax Audit or Investigation made upon the Insured prior to the inception of this policy;
- 5.1.2 fact, matter or circumstance known to the Insured, at any time prior to the inception of this policy, and which the Insured knew or a reasonable person in the Insured's profession could, in the circumstances, be expected to know or have known might give rise to a Claim, Tax Audit or Investigation against the Insured;
- 5.1.3 fact, matter or circumstances which were disclosed by the Insured to Us prior to the inception of this policy, whether in the proposal or otherwise; or
- 5.1.4 fact, matter or circumstance which was notified by the Insured to any prior insurer.

### 5.2 Trading Losses and Insolvency

- 5.2.1 any trading losses or trading liabilities or debts incurred by any business managed or carried on by the Insured; or
- 5.2.2 any insolvency or administration of the Named Insured:
  - a. arising directly or indirectly from or in connection with one or more of the following:
    - ii. any act, error or omission of any Insured which is alleged to have led to or caused, directly or indirectly, wholly or in part the Named Insured being unable to pay any or all of their debts as and when they fall due;
    - iii. the Named Insured having sustained financial loss due, directly or indirectly, wholly or in part to any act, error or omission of any Named Insured, but only if such Claim is made or commenced after:
      - a. an order being made for the winding up of the Named Insured;
      - b. the appointment to the Named Insured of a liquidator, receiver, administrator or an administrative receiver or a trustee in bankruptcy or, in the case of a voluntary

arrangement, a nominee or a supervisor;

- c. a proposal being made by or to the Named Insured, or by or to its creditors, of a composition of debts or scheme of arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise.
- b. alleging, arising directly or indirectly from or in connection with:
  - iii. any Claim brought by or on behalf of any liquidator, receiver or administrator of the Named Insured; or
  - iv. any Claim brought by or on behalf of any creditor or debt holder of the Named Insured alleging, arising out of or in connection with the Named Insured being unable to pay any or all of its debts as and when they fall due.
- e. in any way whatsoever relating to the solvency or insolvency of the Named Insured.

### 5.3 Nuclear Risks

- 5.3.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 5.3.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 5.4 War and Terrorism

- any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:
- 5.4.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
  - 5.4.2 riots, strikes or civil commotion;
  - 5.4.3 any Act of Terrorism; or
  - 5.4.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 5.4.1 to 5.4.3 above.



## 5.5 Asbestos, Toxic Mould and Pollution

asbestos, toxic mould, seepage, Pollution or contamination of any kind.

## 5.6 USA/Canada

5.6.1 any action brought in any court of the United States of America or Canada or any judgement registered or lodged in any jurisdiction in connection with such an action; or

5.6.2 any work or activities undertaken by the Insured in the United States of America, or Canada.

## 5.7 Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, disease or death of any employee of the Insured or damage to or destruction of any property of any employee, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment other than in respect to a Employment Practices Wrongful Act covered under Insuring Clause 1.1.5.

## 5.8 Employment Practice Wrongful Act

any Employment Practice Wrongful Act other than in respect of Insuring Clause 1.1.5.

## 5.9 Bodily Injury and/or Property Damage

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any person(s) or loss of or damage to property.

This Exclusion does not apply however to:

- a. any Claim under Insuring Clause 1.1.3 Professional Indemnity other than a Claim in connection with a person acting in their capacity as a Medical Professional or Healthcare Professional; or
- b. any Claim under Insuring Clause 1.5 Employment Practices Liability; or
- c. any Claim under Insuring Clause 1.1.7 Crisis Consultancy Expenses; or
- d. any Claim under Insuring Clause 1.1.8 Fines and Penalties; or
- e. Automatic Extension 2.8 - Costs of an Inquiry or Investigation; or
- f. Automatic Extension 2.16 - Pollution Investigation and Defence Costs; or
- g. Automatic Extension 2.18 Defamation, Libel and Slander

- h. Automatic Extension 2.19 - Occupational Health & Safety; or
- i. Automatic Extension 2.35 - Third Party Employment Practices Cover; or
- j. Optional Extension 3.3 Malpractice where specifically insured.

## 5.10 Contractual Liability

any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement:

- 5.10.1 to pay liquidated damages or any penalty; or
- 5.10.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

## 5.11 Fraud, Dishonest Criminal or Intentional Loss Damage or Injury

any act, error or omission of any person which is dishonest, fraudulent, criminal or malicious or which is intended by that person to cause loss, damage or injury or to deprive a third party of a right to which they would otherwise be entitled (or which is done or omitted to be done with reckless disregard for the consequences) or is a wilful or reckless breach of statute, contract or duty.

This Exclusion will not apply, including for the avoidance of doubt, to Our obligation to advance costs and expenses under Automatic Extension 2.6:

- a. until the dishonest, fraudulent, criminal, malicious or intentional conduct has been finally established by court judgement or other final adjudication (including all available appeals); and
- b. in respect of any Claim under Insuring Clause 1.1.6.

For the purpose of this Exclusion, the fact that one Insured has committed or is alleged to have committed the conduct described above will not be imputed to any other Insured.

## 5.12 Professional Duty

any Wrongful Act causing a breach of professional duty by the Insured in the conduct of the Professional Business.

However this exclusion 5.12 does not apply to any Claim made:

- a. against any Insured Person alleging failure to supervise in their capacity as an Insured Person; or
- b. under Insuring Clause 1.1.3 Professional Indemnity; or

c. under Automatic Extension 2.24 - Vicarious Liability.

### 5.13 Infringement of Intellectual Property Rights

any deliberate infringement of any copyright or patents or other intellectual property rights.

### 5.14 Payments or Benefits Received

any fees, charges, disbursements, expenses, costs, taxes, commissions, grants, funding or other payments or benefits of whatsoever kind received or retained by, or paid or payable to, the Insured in connection with the Professional Business.

### 5.15 Associated Companies

made against the Insured by any firm, company, partnership or other entity in which the Insured or any director, partner or principal of the Insured has a financial or executive interest or which has a financial or executive interest in the Insured unless solely emanating from an independent and unrelated third party.

### 5.16 Retroactive Date

- 5.16.1 any Employment Practices Wrongful Act committed or alleged to have been committed prior to the EPL retroactive date (if any) specified in the Schedule or any Employment Practice Wrongful Act occurring prior to such EPL retroactive date which is related to or a continuation of or repetition of or causally connected to an Employment Practice Wrongful Act occurring prior to such EPL retroactive date; or
- 5.16.2 any Wrongful Act (except Employment Practices Wrongful Act) committed or alleged to have been committed prior to the retroactive date (if any) specified in the Schedule.

### 5.17 Investment Advice or Financial Activities

- 5.17.1 the giving of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial return (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any investment or portfolio of investments; or
- 5.17.2 in connection with any public or private issue of shares, debentures, preference shares (redeemable or otherwise), promissory notes or any other form of negotiable or non-negotiable security for the raising of capital by equity, debt

or any other means and/or the issue of any prospectus or the making of any written or oral representation, in connection with any such issue.

### 5.18 Listed Human Disease

any actual or alleged liability directly or indirectly arising out of, related to, or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

Listed Human Disease shall mean:

- a. any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or
- b. any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced

regardless of when the disease is so listed or identified.

### 5.19 Sanctions

any Claim or Investigation arising from or in any way connected with any matters where the provision of such benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

### 5.20 Cyber Liability and Social Engineering

any Claim or Investigation arising out of, related to, or in connection with:

- i. the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or
- ii. Social Engineering Fraud.

This Exclusion does not apply however to:

- a. Automatic Extension 2.36.7 c; or
- b. Automatic Extension 2.37; or
- c. Optional Extension 3.5 where specifically insured.

## 5.21 Employment Practices Liability Exclusions

The following exclusions apply specifically to Insuring Clause 1.1.5:

5.21.1 We will not indemnify the Insured under this extension for any amounts in connection with or any part of a Claim for:

- a. any obligation pursuant to any law or any regulation in respect of workers' compensation, disability benefits, redundancy or unemployment benefits or compensation;
- b. bodily injury (excluding mental injury which includes but is not limited to mental stress and mental anguish), disease or death of any Employee or damage to or destruction of any property of any Employee, including loss of use;
- c. a contract of employment alleged to be unfair or contrary to public interest;
- d. industrial disputes involving a strike, picket, lockout, go slow or work to rule. This exclusion however does not apply to any Employment Practices Wrongful Act for Retaliation;
- e. any liability or costs incurred by the Named Insured to modify any building or property in order to make such a building or property more accessible or accommodating to any person;
- f. any liability arising out of any notice period, severance payment, under payment of remuneration, pursuant to a contract or agreement or implied by law or which represent any amount the Insured would have been liable for in the absence of an Employment Wrongful Act.

## 5.22 Fidelity and Third Party Crime, Fraud and Dishonesty Claim Exclusions

The following exclusions apply specifically to Insuring Clause 1.1.6 and Automatic Extension 2.36:

We are not liable to indemnify the Named Insured:

5.22.1 for Direct Financial Loss or loss arising directly or indirectly from or in connection with any act, error or omission of any independent contractor (other than an employee), broker, merchant, external solicitor or external accountant, or other similar agent or representative. This exclusion shall not apply to any organisation to which

the Named Insured has outsourced any normal administrative function under a written contract of engagement with such organisation.

5.22.2 for Direct Financial Loss or loss arising directly or indirectly from or in connection with the loss or misuse of confidential information, material or data.

5.22.3 in respect of any Direct Financial Loss arising from or in connection with loss of income or profit.

5.22.4 in respect of any Direct Financial Loss arising from or in respect of indirect or consequential loss or damage of any kind, apart from the Named Insured's costs to establish the existence and the amount of any loss provided such loss is covered by Insuring Clause 1.1.6.

5.22.5 in respect of any Direct Financial Loss where such loss results from an Insured Person knowingly having given or surrendered money or securities or property in any exchange or purchase with a third party not in collusion with an Insured Person.

5.22.6 in respect of any Direct Financial Loss which can only be proved solely by:

- a. a profit and loss computation or comparison; or
- b. a comparison of inventory records with an actual physical count.

provided that where Direct Financial Loss results from or is suspected of resulting from an Insured Person, a comparison of inventory records with an actual physical count can be relied on as partial evidence in support of the Direct Financial Loss claimed.

5.22.7 in respect of any Direct Financial Loss arising directly or indirectly from or in connection with:

- a. any trading of money or securities whether or not in the name of the Named Insured and whether or not in a genuine or fictitious account;
- b. any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like unless the loss is a result of a fraudulent act which results in the Insured making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration.

## 5.23 Tax Audit Exclusions

The following exclusions apply specifically to Insuring Clause 1.1.9:

We will not indemnify the Named Insured:

- 5.23.1 for any Professional Fees incurred without Our prior written consent;
- 5.23.2 for any claim or claims caused by or arising out of any income return that has not been prepared or reviewed prior to dispatch by your Tax Agent. However, this exclusion does not apply to any Return for:
  - a. prescribed sales tax;
  - b. income derived from any payment under a contract of employment of service between an Insured and any other person, company or entity, other than when that payment is paid by a company for which an Insured Person is a director or has a controlling interest;
  - c. income derived from any payment from superannuation, pension or other retirement benefit; or
  - d. income derived from personal investments that You are not wholly or mainly dependent on;
- 5.23.3 if the Insured:
  - a. brings about a Tax Audit through the failure to lodge taxation or any other return within the time limit prescribed by statute or through any extension of time granted by the Authority;
  - b. makes a statement to the Authority or Tax Agent that omits a material particular or is false or misleading; or
  - c. brings about a Tax Audit by a failure to pay all taxes by the due date or within any extension of time granted by the Authority;
- 5.23.4 for the amount of any fine or penalty that the Insured may be ordered to pay by any Authority or court;
- 5.23.5 for any amount that the Insured is unable to recover because of a contract or agreement entered into that excludes or limits the Insured's rights to recover that amount;
- 5.23.6 for any tax return prepared:
  - a. by a person who ordinarily resides outside Australia;
  - b. for a company, firm or entity which operates outside Australia;
- 5.23.7 for Professional Fees incurred relating to Tax Audits of income received or earned where the source of income is outside Australia;
- 5.23.8 for any claim arising from any Tax Audit for which notice or information was received by the Insured or your Tax Agent before the inception of this Policy;
- 5.23.9 for any claim or claims caused by or arising out of any inquiry from an Authority which is not related to either an identified intention to conduct a Tax Audit or is not directed at obtaining information or data for a possible future Tax Audit;
- 5.23.10 for any claim or claims caused by or arising out of any fraudulent act or fraudulent omission or statement made by the Insured to an Authority. However, this exclusion does not apply when a false or misleading statement made by the Insured results from:
  - a. being misled by the Authority, when the Insured did not and could not be expected to know that statement was false or misleading; or
  - b. a matter which the Insured can demonstrate to Our satisfaction to be a contentious matter;
- 5.23.11 for any claim or claims caused by or arising out of the Insured's improper, unwarranted or unjustified refusal or failure to comply with any request made by the Authority.  
  
Refusal or failure to comply will not be deemed improper, unwarranted or unjustified if the Insured refuses or fails to comply based upon the reasonable advice of a Tax Agent or professional adviser that such refusal or failure is appropriate and the Insured provided the Tax Agent or professional adviser with all relevant documents and information.
- 5.23.12 for any claim or claims caused by or arising out of any wrongful act committed by the Insured with wilful, dishonest, fraudulent, malicious or criminal intent;
- 5.23.13 for any Tax Audit where a return has been prepared lodged or submitted dishonestly or fraudulently, and where the supporting documents have been falsely created or collected;



5.23.14 for any Tax Audit where the Australian Taxation Office, or where a Tax Agent assesses the Insured's behaviour as being a case of deliberate evasion or recklessness;

5.23.15 for any routine enquiries, or enquiries from the Tax Agent which are not identified as being either preliminary to, or relating to a Tax Audit of a return;

5.23.16 for Professional Fees that are:

- a. associated with any criminal prosecution;
- b. associated with any return lodged outside Australia;
- c. in respect of any person or organisation ordinarily resident outside Australia;

5.23.17 for any:

- a. amounts sought by any amended notice of assessment;
- b. additional tax, duty, government impost or the like; or
- c. costs in legally pursuing or defending any legal actions against the Insured or initiated by the Insured (unless it is at Our discretion);
- d. for any Tax Audit that includes a refund or claim for tax or duty relief arising out of an arrangement, facility, financial structure or the like adopted for the principal purpose of obtaining that refund or relief, unless the arrangement has received prior written approval from the relevant government or government authority or agency before being offered to the Insured or the general public;

5.23.18 for any form of activity involving a periodic review relevant to the Insured maintaining industry status, licence, compliance, membership, any form of occupational health and safety compliance, or any similar requirements;

5.23.19 for any form of activity involving a review of how the professional firm assisting the Insured undertakes its professional duty;

5.23.20 for any form of practice or procedural audit of any of the Insured's files;

5.23.21 for any activity involving a statutory authority;

5.23.22 for any activity agency gathering information or data that is not part of a formal Tax Audit; or

5.23.22 for any activity involved in the familiarisation, education, training, application, implementation,

process or operation of any amendments or changes to existing or the introduction of new statutory or industry regulation.

## 5.24 Malpractice Exclusions

The following exclusions apply specifically to Optional Extension 3.3:

5.24.1 We will not indemnify the Insured under this extension for any Claim which arose out of services provided by a Medical Professional or Healthcare Professional employed or engaged by the Insured where the Medical Professional or Healthcare Professional:

- a. was required to be but was not registered in accordance with any Commonwealth or state legislation where the services were provided; or
- b. did not hold the requisite qualifications, authorisations or licenses to carry out such services; or
- c. was under the influence of alcohol, other intoxicants or narcotics.

5.24.2 We will not indemnify the Insured under this extension for any Claim which arose directly or indirectly from or attributable to the provision of or failure to provide any services connected with pregnancy, labour or the act of giving birth which will include the period commencing with the onset of childbirth pains until 12 hours after birth.

5.24.3 We will not indemnify the Insured under this extension for any Claim which arose directly or indirectly from or attributable to any Clinical Trial unless Optional Extension 3.4 is included in the Schedule.

## 5.25 Cyber Risk Exclusions

The following exclusions apply specifically to Optional Extension 3.5. We will not indemnify the Insured in respect of any Claim, costs, expenses, or Extortion Loss directly or indirectly arising out of, related to or in connection with:

- 5.25.1 any Computer Virus or logic bomb written, contributed to in any way, or created by the Insured.
- 5.25.2 the use or provision of any games, or any gaming, lottery or auctioneering facilities or gambling.
- 5.25.3 any actual or alleged infringement of, violation



of, or assertion of any right to or interest (other than provided in Clause 3.5.2) in any:

- a. patent;
- b. software or its source or content or material;
- c. expression, method, or process designed to control or facilitate any operation or other use of a Computer or automated system.

including client lists.

- 5.25.4 any sexually explicit, pornographic or obscene material unless arising directly from the activities of a Hacker.
- 5.25.5 the failure or interruption of the service provided by an internet service provider or any telecommunications or other utility provider.
- 5.25.6 any exploits or vulnerabilities in software or data developed by and unique to the Insured.
- 5.25.7 any defamatory statement related to any director, officer, principal, partner or Employee of the Insured or an independent contractor directly contracted to the Insured and working under the Insured's supervision.
- 5.25.8 any liability arising from any user generated content.
- 5.25.9 any trading liability or trading loss including those arising from the loss of any account, business or client.
- 5.25.10 the actual or alleged failure by the Insured to provide natural persons with the ability to opt-in or opt-out from the collection, acquisition or retention of personal information.
- 5.25.11 the actual or alleged unlawful collection, acquisition or retention of Personal Information where such collection, acquisition or retention is performed with the knowledge and consent or co-operation of a principal, partner, director or officer of the Insured.
- 5.25.12 any intentional violation of any law, regulation or by-law used to impose liability in connection with any unsolicited distribution, where such violation has occurred with the knowledge and or consent of a principal, partner, director or officer of the Insured.
- 5.25.13 any failure of any equipment including hardware or software to process any data or to operate properly due to any failure to correctly recognise any given date.
- 5.25.14 costs or expenses incurred to replace, upgrade, update, improve, or maintain a Computer System or Website. This exclusion shall not apply to Optional Extension 3.5.3.
- 5.25.15 any loss arising out of service credits, rebates, discounts, price reductions, coupons, prizes, awards or other contractual or non-contractual incentives, inducements or promotions offered by the Insured to its Clients.
- 5.25.16 any competitor's proprietary information

## 6. Claims Conditions

### 6.1 Discovery and Notice of a Claim

If during the Policy Period the Insured receives notice of any Claim or Investigation that may be covered under this insurance the Insured will give notice to Us as soon as practicable and before the expiry of the Policy Period.

Notice of any Claim will be provided in the first instance in writing / by email to:

Community Underwriting  
P.O. Box 173 Balmain East NSW 2014

or

admin@communityunderwriting.com.au

Notice must include but not be limited to a description of:

- 6.1.1 the nature of the alleged or potential Claim, the names of the actual or potential claimants and the date and manner in which the company or Insured Persons, as the case may be, first became aware of the claim; or
- 6.1.2 in respect to an Investigation, the nature of the investigation, the name of the official body conducting the investigation and the date and manner in which the company or insured persons, as the case may be, first become aware of the investigation.

Any notification, sent by post or email, will be effective from the date received by Community Underwriting.

### 6.2 Admission of Liability

In the event of any Claim, the Insured will not admit liability and no admission, offer, settlement, promise or payment will be made by the Insured without Our prior written consent.

### 6.3 Conduct of Claims

Following notification of any Claim or Investigation under this policy, We will be entitled to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured will Cooperate with and give all such assistance as We may reasonably require.

### 6.4 Claim Settlements

We may at any time pay (or agree to pay) to the Insured in connection with any Claim or Claims the Indemnity Limit (less the Excess, any sums already paid and unpaid Defence Costs incurred with Our prior written consent) and upon such payment (or agreement to pay) We will not be under any further liability in respect of such Claim or Defence Costs except for Defence Costs incurred prior to such payment (or agreement to pay) with Our prior written consent.

In no circumstances will We be liable in respect of such Claim or Claims for an amount greater than otherwise provided for in this policy. In the event that:

- 6.4.1 We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy in respect of such Claim or Defence Costs, the Insured will refund to Us that proportion of the payment which exceeds the amount which We would otherwise have been liable for in accordance with the policy; and
- 6.4.2 We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy in respect of such Claim or Defence Costs, Our liability in respect of such agreement will be limited to the amount which We would otherwise have been liable for in accordance with the policy.

### 6.5 Our and the Insured's Right to Defend

The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued) advises that, taking due account of the interests of both Us and the Insured, the defence of such proceedings has reasonable prospects of being successful and should be contested having regard to the alternative to contesting the proceedings.

If the Insured wishes to continue to contest any Claim which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim will thereafter be limited to the amount for which the Claim could have been settled plus Defence Costs incurred with Our prior written consent up to the date upon which it would have reasonably settled the Claim, less any unpaid Excess or the final amount of the Claim including Defence Costs.

## 6.6 Excess

In respect of each Claim or loss covered by this policy the Insured is liable for the amount of any Excess stated in the Schedule and We will have no liability for the amount of any Excess.

## 6.7 Allocation

Where the Insured is entitled to indemnity pursuant to the covers under the heading 1. Insuring Clauses in circumstances where a Claim is made and part of that Claim for compensation arises out of, is in connection with or is related to facts or matters that are not covered by this policy then, Our liability under this policy is limited to that proportion of the Defence Costs which represents a fair and equitable allocation between the Insured and Us, taking into account the relative legal and financial exposures attributable to covered allegations and allegations that are not covered under this policy.

In circumstances where the Insured and Us cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to binding opinion from a Senior Counsel mutually agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

The costs of opinion will be paid by Us and will not form part of the Defence Costs. The appointed Counsel shall determine the issue as an expert and not as an arbitrator. If allocation cannot be agreed in respect of Defence Costs, We may advance Defence Costs at our discretion until the allocation is determined by agreement, expert determination or judgement.

## 6.8 Fidelity and Third Party Crime, Fraud and Dishonesty Claim Conditions

The following conditions apply specifically to Insuring Clause 1.1.6 and Automatic Extensions 2.32 and 2.36:

- 6.8.1 the Insured must notify us of any loss under Insuring Clause 1.1.6 or Automatic Extensions 2.32 or 2.36 as soon as practicable following the date of such discovery, but never beyond the expiry of the Policy Period or the Extended Discovery Period provided under Optional Extension 3.1;
- 6.8.2 the Named Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from such person committing or

condoning such dishonest, fraudulent, criminal or malicious act or omission;

- 6.8.3 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Named Insured to the person committing such act, or any monies legally held by the Named Insured and belonging to such person, will be deducted from any amount payable under this insurance;

- 6.8.4 We will only indemnify the Named Insured for the balance of loss sustained in excess of the amounts recoverable from the person committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;

- 6.8.5 any indemnity under this extension is subject to the Fidelity Excess specified in the Schedule which shall apply inclusive of Defence Costs and to each and every loss incurred by the Named Insured;

- 6.8.6 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 6.8.7 all loss resulting from a single act or any number of acts of the same principal, partner, trustee, director, officer, employee or volunteer, and all loss whether such act or acts occurred before or during the Policy Period, will be treated as a single loss and the applicable Indemnity Limit and Excess will apply.

- 6.8.8 regardless of the number of years that an Insured may have a policy arranged with Us and the total premium amounts paid during that period, the amount that We will pay for any Fidelity Loss will not be cumulative from Policy Period to Policy Period.

- 6.8.9 the basis of valuation for any Fidelity Loss will be determined by:

- a. the lesser of the market value at the close of business on the date of discovery for any shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, and other negotiable and non-negotiable instruments, or the cost of replacing such instruments;
- b. the rate of exchange which applies to any foreign currency as published by the Reserve Bank of Australia at the close of

- business on the date of discovery;
- c. the cost to repair or replace any physical and tangible property with property of similar quality or value at the time the Named Insured furnishes proof of a Fidelity Loss.

- b. shall have the right and full discretion to conduct claims; and
- c. reserve the right to negotiate and settle any claim on terms We consider appropriate;

6.8.10 recoveries for an Fidelity Loss covered under Insuring Clause 1.1.6 (excluding any reinsurance recoveries) shall be distributed after deduction of any costs of recovery as follows:

- a. first to the Named Insured for the amount of the Fidelity Loss in excess of the Indemnity Limit;
- b. second to Us for the amount of such loss paid to the Named Insured as a loss under the policy;
- c. third to the Named Insured for the Excess applicable to the loss;
- d. fourth to the Named Insured for the amount of any loss not covered under this policy.

6.9.4 The Insured must make a full and complete statement of the total income and profits or gains of a capital nature derived by you and of any deductions or capital losses during each tax year;

6.9.5 The Insured must be registered for GST purposes, if required by the operation of legislation; and

6.9.6 all correspondence, requests and inquiries from the Authority must be dealt with within an acceptable time, taking all reasonable steps to minimise cost and delay.

## 6.10 Priority of Payments

If payment of a Claim, liability, loss, cost, expense, Fine or Penalty is due under this Policy but the amount of such Claim, liability, loss, cost, expense, Fine or Penalty in the aggregate exceeds or may exceed the remaining available Indemnity Limit, We are entitled to

- a. first pay such Claim for which coverage is provided by this Policy under insuring clause 1.1.1 (Office Bearers Liability) and Section 2 Automatic Extension 2.8 - Inquiry Costs; then
- b. to the extent of any remaining amount of the Indemnity Limit available under 6.10 a above, pay such Claim, liability, loss, cost, expense, Fine or Penalty for which coverage is provided under any other insuring clause or extension of this Policy.

The bankruptcy or insolvency of the Insured will not relieve us of our obligations to prioritise payment of a Claim, liability, loss, cost, expense, Fine or Penalty under this Policy pursuant to this condition.

Except as otherwise provided, We may pay a Claim, liability, loss, cost, expense, Fine or Penalty as it becomes due without regard to the potential for other future claims under the Policy or future payment obligations under the Policy.

## 6.9 Tax Audit Claims Conditions

The following conditions apply specifically to Insuring Clause 1.1.9:

6.9.1 for any claim:

- a. the Insured must notify Us within 30 days of the first notice to you or your Tax Agent of a Tax Audit;
- b. the Insured must keep Us fully informed of all developments as they occur;
- c. the Insured must take all necessary and reasonable steps to minimise any delays and costs incurred or likely to be incurred;
- d. We have the right to directly access your Tax Agent and lawyers and any documented advice they have given relevant to the Tax Audit; and
- e. the Insured must ensure that the Tax Agent will and does assist Us with any matter We may pursue with the Authority.

6.9.2 the Insured must Cooperate with Us fully in any investigation, negotiation, defence or settlement of any claim. This may include attending court to give evidence.

6.9.3 We:

- a. may appoint legal or other representatives to assist in the conduct of a claim;

## 7. General Conditions

The following conditions apply to this Policy.

### 7.1 Jurisdiction and Service

In the event of a dispute arising under or in connection with this policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

### 7.2 Terms of Payment

All premiums due to Us under this policy will be paid within thirty (30) days from the policy's inception.

### 7.3 Cancellation

The circumstances and manner in which We may cancel this insurance is governed by the Insurance Contracts Act 1984 (Cth).

We may cancel this insurance in accordance with the Insurance Contracts Act 1984 (Cth). You may cancel this insurance at any time by notifying Us. Irrespective of whether We or You cancel the insurance, You will be entitled to a refund of the unexpired premium provided You have not notified a claim under the policy. If you have notified a claim under the policy, then You will not receive a refund of any premium you have paid for the policy.

### 7.4 Subrogation

If any payment is made by Us, the Insured grants to Us all rights of recovery against any parties from whom a recovery may be made and the Insured will take all reasonable steps to preserve such rights.

In no event, however, will we exercise our rights of subrogation against and Insured Person under this policy unless it is determined by a written admission, a final judgement or other adjudication in the underlying action or in a separate action or proceeding that such Insured Person had obtained an illegal profit or advantage or committed an intentionally dishonest act or omission or intentional fraudulent or a criminal act.

### 7.5 Claims Aggregation

Where two (2) or more Claims are in connection with the same original cause, a series of related or interrelated events or causes or breaches of duty, then all such Claims will constitute one Claim under this policy; and

- 7.5.1 only one (1) Excess will be payable by the Insured; and

- 7.5.2 the maximum amount payable by Us in respect thereof will not exceed the Indemnity Limit (except in respect of Defence Costs which are stated to be "in addition" to the Indemnity Limit).

### 7.6 Alteration to Risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Policy Period including but not limited to:

- 7.6.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and
- 7.6.2 any material change in the nature of the advice or professional services offered by an Insured or any material change in the Professional Business.
- 7.6.3 where such notice is given and/or where there is any material alteration to the risk, We will be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).
- 7.6.4 where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce Our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

### 7.7 GST

Where We are required to indemnify the Insured and the Insured is entitled to claim an input tax credit in relation to GST the amount of such input tax credit will be deducted from any amount payable by Us.

Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured's entitlement to the Input tax credit.

### 7.8 Other Insurance and Non Accumulation

Where any Claim is insured under any other insurance policy (other than an insurance policy specifically arranged to apply in excess of this policy), then to the



extent permitted by the Insurance Contracts Act 1984 (Cth), as amended, this policy, subject to its Insuring Clauses, Definitions, Exclusions and Conditions will only provide cover in respect of any Claim to the extent that the amount of such Claim is in excess of the amount of any other valid and collectible insurance policy.

Where a party insured under the Policy is also entitled to indemnity under another insurance policy issued by Us, our maximum Indemnity Limit shall be equivalent to the highest.

## 7.9 Employment Practices Liability Conditions

The following conditions apply specifically to Insuring Clause 1.1.5:

- 7.9.1 any indemnity under Insuring Clause 1.1.5 is subject to the EPL Excess specified in the Schedule. EPL Excess will apply in relation to each and every person who brings a claim against the Insured and includes Defence Costs.
- 7.9.2 Our total aggregate liability under Insuring Clause 1.1.5 shall not exceed the Indemnity Limit which amount is part of, and not in addition to the Indemnity Limit.
- 7.9.3 The cover provided by Insuring Clause 1.1.5 is not subject to the Insuring Clauses or Exclusion 5.7, 5.8 or 5.9.

## 7.10 Fidelity and Third Party Crime Conditions

The following conditions apply specifically to Insuring Clause 1.1.6:

- 7.10.1 the maximum aggregate amount payable under Insuring Clause 1.1.6 is limited to the sublimit specified in the Schedule;
- 7.10.2 the cover provided by Insuring Clause 1.1.6 is not subject to Exclusion 5.11;
- 7.10.3 the Insured must observe the system of audit, supervision and checks which in connection with Insuring Clause 1.1.6 were stated by the Insured as being observed.

## 7.11 Tax Audit Conditions

The following conditions apply specifically to Insuring Clause 1.1.9:

- 7.11.1 the most We will pay in respect of a Tax Audit commenced in the Period of Insurance is the Insured Amount shown in the Schedule;

- 7.11.2 the cover provided by Insuring Clause 1.1.9 is not subject to any Excess.

## 7.12 Malpractice Conditions

The following conditions apply specifically to Optional Extension 3.3:

- 7.12.1 any instrument used or intended for use by a Medical Professional or Healthcare Professional which is intended to be used in contact with or penetrate human skin tissue or bodily fluid must be:
  - a. used and stored in accordance with the manufacturer(s) instructions; and
  - b. where approved by the manufacturer(s) and by a relevant government health authority to be used more than once, sterilised prior to such use using only sterilising apparatus specifically approved by the manufacturer(s) and in accordance with the instructions, recommendations or guidelines of such manufacturer(s), and in accordance with relevant government health authority guidelines.

## 7.12 Merger, Acquisition or Change of Control

If during the Policy Period:

- a. the Named Insured merges or consolidates with another organisation; or
- b. another organisation or group of organisations or persons acting in concert acquires the voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights in the Named Insured; or
- c. another organisation or group of organisations or persons acting in concert secures the ability to control decisions made by the Board of the Named Insured;

then:

- i. the Named Insured will provide written notice to Us within 30 days of the effective date of such change; and
- ii. the cover provided under all Insuring Clauses and Extensions of this Policy continues until termination of the Policy Period but only in respect of Claims or Investigations for Wrongful Acts which take place or are alleged to have been committed prior to the merger, acquisition or change of control; and

- iii. all premiums paid or due at any time under this Policy are deemed fully earned and non-refundable.

## 8. Additional Information

### Dispute Resolution

We are committed to providing Our clients with a high level of service, empathy with the sector and a reasonable response to all matters.

If you think that We have let you down in any way, or Our service is not what you expect, tell Us so that We can help.

We are committed to responding to Your complaint fairly. If you have a complaint:

Step 1: On the spot, if We can!

You can contact Us by phone on 02 8045 2580 or by email at [enquiries@communityunderwriting.com.au](mailto:enquiries@communityunderwriting.com.au)

If We can't resolve your complaint immediately, We will commit to responding to your complaint within 15 business days of first being notified of the complaint.

- If We need more information or more time to respond properly to your complaint We will contact you to agree an appropriate timeframe to respond.

Step 2: Internal Dispute Resolution

- If you are not happy with Our response, please tell Us in writing. You may escalate it as a dispute and Our Internal Dispute Resolution panel (the panel) will review the matter. The panel will be independent of the person who initially considered your complaint.
- The Disputes Resolution Officer will acknowledge your dispute in writing within 2 business days of receipt and will investigate all details of your dispute and will provide you with a written response of the outcome within 15 business days of first being notified of your dispute.
- In some cases We may be unable to reach a conclusion within this timeframe, and may request a later response date. If this occurs, We will keep you informed of progress of the dispute no less than once every 10 days.

Step 3: External Dispute Resolution scheme

Should We be unable to resolve your complaint (including the IDR process referred to above) within 45 days or you are not happy with Our response/handling of your complaint at any given time, you can seek an external review via Our external dispute resolution scheme, administered by the Australian Financial Complaints Authority (AFCA).

This is an independent national body and its services are free to you. As a member We agree to accept the AFCA's decision.

You can contact the AFCA by:

Mail: Australian Financial Complaints Authority Ltd,  
GPO Box 3, Melbourne, Victoria 3001;  
Phone: 1800 931 678;  
Facsimile: (03) 9613 6399  
[info@afca.org.au](mailto:info@afca.org.au)  
Website: [www.afca.org.au](http://www.afca.org.au)

### Goods and Services Tax (GST)

This insurance Policy has provision for the payment of Goods and Services Tax:

- by You in relation to premiums charged by Us;
- by Us in relation to claims.

You must advise Us of your correct Australian Business Number & taxable percentage. Any GST liability arising from Your incorrect advice is payable by You.

### Retaining Policy Documents

Incidents which may be claimable under this Policy can take many years before they become known to your organisation.

To enable you to prepare the best defence against an incident that may have arisen some years in the past it is important that you have a document retention and security policy which addresses the effective retention of:

- Your Policy and any endorsements;
- operational and risk management procedures;
- employment records and contracts;
- any published client or other promotional material.