

Elite III Architects and Engineers
Professional Indemnity Insurance
Policy

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Duty of Disclosure

Your Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract.

What You do not need to tell us

You do not need to tell us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell us about.

If You do not tell us something

If You do not tell us anything You are required to, 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.

Elite III Architects and Engineers Professional Indemnity Insurance Policy Wording

In consideration of the payment of the premium and in reliance upon all statements made and information provided to the **Insurer**, including statements made in the **Proposal** and materials accompanying it, which it is agreed shall form the basis of this insurance, and subject to all the terms and conditions of this **Policy**, the **Insurer** agrees as follows:

1. Insuring Clause

1.1 Civil Liability

The **Insurer** will pay to or on behalf of the **Insured** any **Loss** resulting from any **Claim** for civil liability in respect of the conduct of the **Professional Services**, provided that such **Claim** is first made against the **Insured** during the **Policy Period**.

2. Extensions

Each of the following Extensions automatically applies unless otherwise stated in an endorsement. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions and conditions of this **Policy**. None of these Extensions increase the **Limit of Liability** or Sub-limits of Liability shown in Item 4. of the **Schedule**.

2.1 Advancement of Defence Costs and Legal Representation Expenses

The **Insurer** shall pay in advance to the **Insured** any covered **Defence Costs** and covered **Legal Representation Expenses** within thirty (30) days of receipt and approval of an invoice for such **Defence Costs** or **Legal Representation Expenses**.

Any **Defence Costs** or **Legal Representation Expenses** paid in advance to the **Insured** shall be repaid to the **Insurer** in the event it is established that the **Insured** is not entitled to such **Defence Costs** or **Legal Representation Expenses**.

2.2 Unintentional Misleading or Deceptive Conduct

The **Insurer** will pay to or on behalf of the **Insured** any **Loss** resulting from any **Claim** for civil liability for any actual or alleged unintentional misleading or deceptive conduct under the Competition & Consumer Act 2010 (Cth) (previously, the Trade Practices Act 1974 (Cth)) or any equivalent provisions in the relevant state or territory Fair Trading Acts, or their respective successor legislation or any similar legislation in any other jurisdiction by the **Insured** in the conduct of **Professional Services** provided that such **Claim**:

- (a) arises from an act, error or failure to act of the **Insured** occurring on or after the **Retroactive Date**; and
- (b) does not involve any liability under the penal or criminal provisions of those Acts.

2.3 Consultants, Contractors, Subcontractors and Agents Vicarious Liability

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** resulting from a **Claim** for civil liability against the **Insured** arising from any acts, errors or failures to act of any consultant, contractor, subcontractor or agent of the **Insured** in the conduct of **Professional Services** for which the **Insured** is legally liable.

This Extension does not afford cover to any consultant, contractor, subcontractor or agent of the **Insured** and does not make any such person or entity an **Insured**.

2.4 Continuous Cover

Despite Exclusion 4.13(c) (Prior Matters), this **Policy** extends to cover the **Insured** for **Loss** resulting from any **Claim** or **Investigation** arising from any **Circumstance** which could have been first notified to the **Insurer** under an earlier professional indemnity insurance policy issued by the **Insurer** and which is notified during the **Policy Period**, provided that:

- (a) the **Insured** has maintained with the **Insurer** and without interruption, a professional indemnity insurance policy from the **Continuity Date** shown in Item 7. of the **Schedule** up until the date this **Policy** commenced; and
- (b) the **Circumstance** took place any time after the **Continuity Date**; and
- (c) the failure of the **Insured** to disclose the **Circumstance** before the commencement of the **Policy Period** was not a result of any fraudulent intention to mislead or misrepresent to the **Insurer**; and
- (d) the **Insured's** entitlement to cover will be determined in accordance with the terms, exclusions, limits of liability and conditions of the policy held by the **Insured** with the **Insurer** on the date when the **Insured** first became aware of the **Circumstance**; and
- (e) the **Insured's** entitlement to cover will be reduced by the amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to notify the **Insurer** of the **Circumstance**; and
- (f) if the policy referred to in paragraph (d) above was co-insured, then the **Insurer** will not be liable for more than its proportion of the indemnity provided by that policy; and
- (g) this Extension does not apply to and is subject to Exclusion 4.13(a) and (b) (Prior Matters); and
- (h) if the **Insured's** rights under this Extension are exercised, the **Insured** agrees to claim only on one of the **Insurer's** policies in relation to the **Claim**.

2.5 Unintentional Defamation

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** resulting from a **Claim** for civil liability for unintentional defamation, libel or slander by the **Insured** in the conduct of the **Professional Services**.

The **Insurer** will not be liable to make any payment under this **Policy** for intentional defamation, libel or slander.

2.6 Discovery Period

If the **Insurer** or the **Insured** does not renew this **Policy**, the **Insurer** will extend the cover under this **Policy** for a discovery period of forty-five (45) days at nil additional premium which will run from the end of the **Policy Period**. This Extension does not apply if there is a fraudulent claim under the **Policy** by or on behalf of the **Insured**.

The discovery period will only apply to a **Claim** first made or an **Investigation** first commenced against the **Insured** before or during such forty-five (45) day discovery period, but only in respect of the **Insured's** conduct of the **Professional Services** prior to the non-renewal of this **Policy**.

The **Insurer** will not be liable to make any payment in respect of any **Claim** first made or **Investigation** first commenced against the **Insured** during the discovery period if at any time the **Insured** obtains any other professional indemnity insurance policy covering in whole or in part the discovery period.

2.7 Emergency Defence Costs and Emergency Legal Representation Expenses

If it is unreasonable for the **Insured** to obtain the **Insurer's** prior written consent to the incurring of **Emergency Defence Costs** or **Emergency Legal Representation Expenses**, the **Insurer** will waive the prior written consent as long as the **Insurer's** consent is sought within thirty (30) days of such **Emergency Defence Costs** or **Emergency Legal Representation Expenses** being incurred.

The cover provided under this Extension in respect of **Emergency Defence Costs** incurred for each **Claim** will not exceed ten percent (10%) of the **Limit of Liability** shown in Item 4. of the **Schedule** per **Claim** and in the aggregate, until written consent is received from the **Insurer**, which shall not be unreasonably withheld.

The cover provided under this Extension in respect of **Emergency Legal Representation Expenses** incurred for each **Investigation** will not exceed ten percent (10%) of the Sub-limit of Liability specified in Item 4.(a) of

the **Schedule** per **Investigation** and in the aggregate, until written consent is received from the **Insurer**, which shall not be unreasonably withheld.

For the purpose of cover under this Extension in respect of **Emergency Legal Representation Expenses** a **Claim** is not required.

2.8 Fraud and Dishonesty for Innocent Parties

Despite, Exclusions 4.5(a) and (b) (Fraud, Dishonesty and Intentional Conduct), the **Insurer** shall pay to or on behalf of an **Insured** the **Loss** for any **Claim** with respect to the **Dishonesty** of an employee provided that:

- (a) the **Company's** principal, partner, director, officer, manager or any other equivalent positions shall not be involved in, nor should reasonably have been aware of such **Dishonesty**; and
- (b) no coverage is available for the dishonest employees themselves; and
- (c) no coverage is available with respect to a **Claim** arising from or in any way connected to the loss of money, negotiable instruments including but not limited to shares, bearer bonds, coupons, stamps, bank, currency notes, bitcoins or any other virtual currency.

2.9 Intellectual Property Infringement

Despite Exclusion 4.6 (Intellectual Property), the **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** resulting from a **Claim** for civil liability for unintentional infringement by the **Insured** of any **Intellectual Property** right, except any actual or alleged infringement of patent right or misappropriation of trade secrets, in the conduct of the **Professional Services**.

The **Insurer** will not be liable to make any payment under this **Policy** for intentional infringement of any **Intellectual Property** right.

2.10 Joint Venture Liability

The **Insurer** agrees to cover any **Loss** resulting from a **Claim** for civil liability against an **Insured** in connection with the conduct of the **Professional Services** as a **Joint Venture** partner.

The cover provided under this Extension for the liability of the **Insured** will be limited to the **Insured's** own proportion of any liability as a **Joint Venture** partner.

The cover provided under this Extension will only be afforded to the **Insured** and does not afford cover to any other participant in the **Joint Venture** or any third party who claims to have rights under this **Policy**.

2.11 Legal Representation at Investigations

The **Insurer** agrees to pay to or on behalf of any **Insured** all **Legal Representation Expenses** for any **Investigation** first commenced against the **Insured** during the **Policy Period**.

The **Insurer's** maximum aggregate liability under this Extension will not exceed the Sub-limit of Liability shown in Item 4.(a) of the **Schedule**.

The **Excess** applicable under this Extension is the amount shown in Item 5.(a) of the **Schedule**.

For the purpose of cover under this Extension, a **Claim** is not required.

2.12 Limitation of Liability Contracts

The **Insurer** recognises that the **Insured** may enter into written contracts relating to **Professional Services** which may exclude or limit the liability of parties to those contracts, and the **Insurer** agrees that such contracts will not prejudice the **Insured's** right to indemnity under the **Policy**.

The cover provided under this Extension does not apply to contracts entered into as a result of a dispute which involves the **Insured** in any way.

2.13 Loss of Documents

The **Insurer** agrees to pay to or on behalf of the **Insured** all **Loss** resulting from any **Claim** for civil liability for the damage, destruction, deletion or loss of **Documents** for which the **Insured** is legally responsible. The damage, destruction, deletion or loss of **Documents** must result from the conduct of **Professional Services** provided by the **Insured** and is first discovered and reported to the **Insurer** during the **Policy Period**.

The cover provided under this Extension applies only where the lost or deleted **Documents** have been the subject of a diligent search.

The **Insurer** will not be liable to pay for **Loss** resulting from a **Claim** which:

- (a) exceeds the reasonable costs, charges and expenses in replacing or restoring the **Documents** that have been lost, damaged, deleted or destroyed; or
- (b) comprises costs, charges or expenses directly or indirectly relating to any **Documents** which have been destroyed, damaged or lost as a result of wear, tear, gradual deterioration, moth or vermin, or by a **Computer Virus**.

The **Insurer's** maximum aggregate liability under this Extension will not exceed the Sub-limit of Liability shown in Item 4.(b) of the **Schedule**.

The **Excess** applicable under this Extension is the amount shown in Item 5.(b) of the **Schedule**.

The cover provided under this Extension applies regardless of when the loss, damage or destruction took place, so long as such loss, damage or destruction of the **Documents** is first discovered and reported to the **Insurer** during the **Policy Period**.

2.14 Newly Acquired or Created Subsidiaries

The **Insurer** agrees to extend cover under this Extension to any **Subsidiary** of the **Company** which is acquired or created during the **Policy Period**, provided that such **Subsidiary**:

- (a) does not increase the **Company's** total gross turnover or gross fees, as identified in the **Proposal**, (whichever is the lesser) by more than twenty percent (20%); and
- (b) conducts and/or provides the same **Professional Services**; and
- (c) is not domiciled and/or incorporated in the United States of America or Canada and their territories or protectorates.

Any **Subsidiary** acquired or created during the **Policy Period** and which falls within (b) above but which does not fall within the requirements of (a) and/or (c) above shall automatically be covered under this **Policy** for a period of thirty (30) days from the date of acquisition or creation of the **Subsidiary** but not beyond that.

Subject to the written agreement of the **Insurer** and subject to any additional premium, terms, exclusions and conditions as the **Insurer** may require, cover under this **Policy** may be extended to a **Subsidiary** which falls within (b) above but which does not fall within the requirements of (a) and/or (c) above beyond thirty (30) days from the date of acquisition or creation.

This Extension will not provide cover in respect of any **Claim** or **Investigation** against the **Subsidiary** arising from the conduct of any **Professional Services** provided or required to be provided before the **Company** acquires or creates such **Subsidiary**.

2.15 Contribution to Public Relations Expenses

- (a) The **Insurer** agrees to pay to or on behalf of the **Insured** the reasonable direct costs and expenses incurred by the **Company** with the **Insurer's** prior written consent (which shall not be unreasonably withheld or delayed) of a public relations firm solely in order to protect the **Company's** professional reputation as a result of its conduct of the **Professional Services** which have led to or could reasonably lead to a **Claim** against the **Insured**.

- (b) The **Insured** will bear uninsured fifty percent (50%) of any such necessary direct costs and expenses covered under this Extension. The **Insurer** agrees to pay the remaining fifty percent (50%) to a maximum aggregate liability not to exceed the Sub-limit of Liability shown in Item 4.(c) of the **Schedule**.
- (c) The **Excess** applicable under this Extension is the amount shown in Item 5.(c) of the **Schedule**.

2.16 Reinstatement

The **Insurer** agrees that in the event that the aggregate **Limit of Liability**, shown in Item 4. of the **Schedule** is exhausted by the payment of **Loss** and/or **Legal Representation Expenses**, the **Insurer** agrees that such **Limit of Liability** will be reinstated only once subject to the following:

- (a) such reinstatement will be limited in total to an amount equal to the sum shown in Item 4. of the **Schedule**; and
- (b) such reinstatement will only apply after the total limit of liability available in any applicable policies in excess of this insurance are exhausted by covered payments under those policies; and
- (c) despite such reinstatement, this **Policy** will be subject to each **Claim Limit of Liability** shown in Item 4. of the **Schedule** and any Sub-limit of Liability shown in Item 4.(a) - 4.(c) of the **Schedule**; and
- (d) the **Insurer's** maximum aggregate **Limit of Liability** under this **Policy** for all **Loss** resulting from all **Claims** and all **Legal Representation Expenses** resulting from all **Investigations**, whether against one or any number of **Insureds**, will never exceed twice the amount shown in Item 4. of the **Schedule**; and
- (e) the reinstated **Limit of Liability** will not apply to any **Claim** or **Investigation** which is related or attributable to the one source or originating or underlying cause or any matter which has contributed to the exhaustion of the **Limit of Liability** shown in Item 4. of the **Schedule**.

2.17 Run-off Cover for the Company

In the event that the **Company** is merged into or acquired by another entity or otherwise ceases to exist or operate or is subject to an **Insolvency Event** during the **Policy Period**, the cover provided under the **Policy** for the **Insured** shall continue until the end of the **Policy Period**, provided that such cover will only apply in respect of a **Claim** that arises from the conduct of its **Professional Services** prior to the date the **Company** was merged into or acquired by another entity, ceased to exist or operate or became the subject of an **Insolvency Event**.

The **Insurer** may, at its sole discretion and on such additional premium, terms, exclusions and conditions as the **Insurer** may require, extend the cover provided by this Extension to include **Claims** first made against the **Insured** within a period of eighty-four (84) months from the end of the **Policy Period**, provided that such cover will only apply in respect of a **Claim** that arises from the conduct of its **Professional Services** prior to the date the **Company** ceased to exist, operate or was merged into or acquired by another entity or became the subject of an **Insolvency Event**.

2.18 Cyber and Privacy Infringement Liability

The **Insurer** agrees to extend cover to any **Loss** arising from a **Claim** for **Cyber and Privacy Infringement Liability** of the **Insured** in the conduct of the **Professional Services**.

The **Insurer** shall not be liable to make any payment under this **Policy** where the conduct giving rise to the **Cyber and Privacy Infringement Liability** is intentional.

3. Optional Extensions

3.1 Contractual Liability

Despite Exclusion 4.1 (Assumed Liabilities and Duties), the **Insurer** agrees to extend cover for a **Claim** for civil liability against the **Insured** arising from an indemnity and/or hold harmless term of a contract to the extent such civil liability results from the **Insured's** performance of **Professional Services**.

3.2 Proportionate Liability

Exclusion 4.1 (Assumed Liabilities and Duties) will not apply to a liability which the **Insured** has assumed under a contract or agreement by reason of having contracted out of the operation of **Proportionate Liability Legislation**, or any capped liability scheme that would otherwise limit the **Insured's** liability.

4A. Exclusions Applicable to Definitions (Section 7)

Certain defined terms in the Definitions section of this **Policy** contain exclusions that change, limit or reduce cover under this **Policy**. The exclusions contained in those defined terms are listed below:

4A.1 Documents

Documents (Definition 7.15) does not include money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument, legally owned by a client of the **Insured**.

4A.2 Investigation

Investigation (Definition 7.26) does not include any industry-wide investigation and/or routine supervision, inspection, compliance or similar review.

4A.3 Legal Representation Expenses

Legal Representation Expenses (Definition 7.29) does not include any remuneration of any **Principal** or **Employee**.

4A.4 Loss

Loss (Definition 7.30) does not include:

- (a) aggravated, punitive or exemplary damages; or
- (b) fines or penalties imposed by law; or
- (c) costs incurred by the **Insured** in complying with any order for, grant of, or agreement to provide injunctive or non-monetary relief; or
- (d) any amount which constitutes reduction, set off or return of fees or expenses, in whole or in part, paid to or charged by an **Insured**; or
- (e) any internal or overhead expenses of the **Company** or the cost of any **Insured's** time; or
- (f) taxes or sums payable in relation to taxes; or
- (g) any matters which are uninsurable under any applicable law or where the **Claim** is made; or
- (h) any liquidated damages which exceed actual damages; or
- (i) that part of any damages awarded or settlement reached which comprises an amount payable by the **Insured** for loss that is consequential or indirectly associated with the **Loss** including loss of profit; loss of use of any plant or facility; loss of earning capacity; loss of opportunity; loss of goodwill; delay or interruption of business; loss of contract; depreciation of any kind; interest or loss due to delay.

4. Exclusions

The **Insurer** will not cover the **Insured** or any other person for **Loss** resulting from any **Claim**, and **Legal Representation Expenses** arising from any **Investigation** or any other payment under this **Policy**:

4.1 Assumed Liabilities and Duties

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged liability assumed under any contract, agreement or understanding except to the extent that such liability would have attached to the **Insured** in the absence of such contract, agreement or understanding.

4.2 Non-compliant Cladding and Fire Safety

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any **Cladding** that it is alleged to be non-compliant with the requirements of the National Construction Code, the Building Code of Australia, an Australian Standard, any State or Territory legislation or building consent provision, or any applicable similar law, regulation, code or standard anywhere in the world, to the extent that that it applies to **Cladding**;
- (b) any **Cladding** that is alleged to have been used, installed, or applied in a manner that does not comply with the National Construction Code, the Building Code of Australia, an Australian Standard or any State or Territory legislation or building consent provision, or any applicable similar law, regulation, code or standard anywhere in the world, to the extent that it applies to the use, installation or application of **Cladding**; or
- (c) any alleged breach of the National Construction Code, the Building Code of Australia, an Australian Standard, any State or Territory legislation or building consent provision, or any applicable similar law, regulation, code or standard anywhere in the world, to the extent that it applies to the regulation of fire safety standards and requirements in buildings.

4.3 Costs Estimates

directly or indirectly caused by, arising out of or in any way connected with any estimate of construction costs except where estimated by a qualified and licensed quantity surveyor.

4.4 Financial Failure, Trading Debts and Insolvency

directly or indirectly caused by, arising out of or in any way connected with any:

- (a) trading debt of an **Insured**; or
- (b) guarantee or other undertaking or obligation in respect of such a debt, given by an **Insured**; or
- (c) insolvency, liquidation, administration or receivership of an **Insured**.

4.5 Fraud, Dishonesty and Intentional Conduct

directly or indirectly caused by, arising out of or in any way connected with any **Insured** committing or condoning or allegedly committing or condoning any:

- (a) dishonest or fraudulent act or failure to act; or
- (b) any malicious, criminal or intentional breach of the law; or
- (c) cartel or other anti-competitive conduct, or gaining any profit or advantage to which the **Insured** is not legally entitled.

4.6 Intellectual Property

directly or indirectly caused by, arising out of or in any way connected with the actual or alleged infringement of any **Intellectual Property** right.

4.7 Licencing Investigations

directly or indirectly caused by, arising out of or in any way connected with any investigation, examination, inquiry or prosecution relating to the **Insured** failing to be properly licenced, registered or accredited to provide **Professional Services** as required by any applicable law or regulation including industry codes or practice.

4.8 Managerial Liability

directly or indirectly caused by, arising out of or in any way connected with any actual or alleged breach by an **Insured** of a duty owed in the capacity of a director, secretary, trustee or officer.

4.9 Mineral Process Engineering

directly or indirectly caused by, arising out of or in any way connected with **Professional Services** provided with respect to:

- (a) design;
- (b) process engineering;
- (c) procurement of materials and equipment;
- (d) construction;
- (e) construction management services; or
- (f) commissioning, ramp up or handover,

under any contract for a mineral or oil and gas processing plant.

4.10 Owners or Occupiers Liability

directly or indirectly caused by, arising out of or in any way connected with:

- (a) the ownership, management, control or occupation of real property by or on behalf of the **Insured** for its own use; or
- (b) the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.

4.11 Obligations to Employees

directly or indirectly caused by, arising out of or in any way connected with any breach of any legal obligation owed to any **Employee** arising out of or in the course of that **Employee's** employment by the **Company**.

4.12 Pollution

directly or indirectly caused by, arising out of or in any way connected with **Pollution** or **Pollutants**.

4.13 Prior Matters

directly or indirectly caused by, arising out of or in any way connected with any:

- (a) **Claim** first made or **Investigation** first commenced before the **Policy Period**;
- (b) matter notified in whole or in part to the **Insurer** or any other insurer before the **Policy Period**; or
- (c) **Circumstance** which was known to or ought reasonably to have been known to the **Insured** prior to the commencement of the **Policy Period**.

4.14 Products Liability

directly or indirectly caused by, arising out of or in any way connected with any goods manufactured, distributed, supplied, installed, treated, assembled or processed by or on behalf of any **Insured**.

4.15 Related Persons and Entities

brought or maintained by or on behalf of:

- (a) any **Insured** or parent company of any **Insured**; or
- (b) any entity within the same group of companies as the **Insured**; or
- (c) any person or entity who, at the time of the act, error or failure to act giving rise to the **Claim** is a **Relative** of any **Insured** or is controlled by a **Relative** of any **Insured**.

4.16 Sanctions

The **Insurer** will not be deemed to provide cover and the **Insurer** will not be liable to pay any **Claim** or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the **Insurer**, or its parent to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

4.17 Consequences of Natural Disaster/Natural Hazard

directly or indirectly caused by, arising out of or in any way connected with:

- (a) any flood, which shall mean the covering of normally dry land by water that has escaped or been released from the normal confines of:
 - (i) any lake, or any river, creek or other natural watercourse, whether or not altered or modified; or
 - (ii) any reservoir, canal or dam;
- (b) water from the sea or **Action of the Sea** or high water;
- (c) earthquake or seismological disturbance;
- (d) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting from any of these things);
- (e) spontaneous combustion, spontaneous fermentation or heating or any process involving the direct application of heat.

4.18 Aviation

directly or indirectly caused by the ownership, operation or navigation of any **Aircraft** or hovercraft, or any product that is incorporated with the **Insured**'s knowledge in an **Aircraft** which is connected with the safety, propulsion, navigation or flying capabilities of an **Aircraft**.

4.19 War and Terrorism

directly or indirectly caused by, arising out of or in any way connected with or in consequence of:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government, public or local authority; or
- (b) any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

5. Claims Conditions

5.1 Notification of Claims and Investigations

- (a) The **Insured** must give written notice of any **Claim** or **Investigation** as soon as reasonably practicable, but always no later than ninety (90) days after the expiry of the **Policy Period**, or thirty (30) days after the expiration of the discovery period provided under Extension 2.6 (Discovery Period), if applicable, whichever is the later, to:

Chubb Insurance Australia Limited
ABN: 23 001 642 020 AFSL: 239687

Grosvenor Place
Level 38, 225 George Street
Sydney NSW 2000
O +61 2 9335 3200
F +61 2 9335 3411
www.chubb.com/au

Email: aus.financiallinesclaims@chubb.com

- (b) All notifications under this **Policy** must include the following information, to the extent they can be reasonably within the **Insured's** power to provide:
- (i) a specific description of the demand or assertion comprising the **Claim** or **Investigation**, including the date when and manner in which the **Insured** first became aware of the matter; and
 - (ii) the details of any parties involved; and
 - (iii) a copy of any written demand or assertion and any document relating to the commencement of proceedings against the **Insured** once available.

5.2 Conduct of Proceedings

- (a) It is the duty of the **Insured**, not the **Insurer**, to defend any **Claim** made against, or arrange representation at an **Investigation** involving, an **Insured**. The **Insurer**, however, may take over and conduct (in the name of any **Insured**) the defence of any **Claim** or **Investigation** in respect of which the **Insurer** is or may be liable to indemnify such **Insured**.
- (b) An **Insured** must not incur any **Defence Costs** or **Legal Representation Expenses** without the prior written consent of the **Insurer**, which shall not be unreasonably withheld. Except as provided for in Extension 2.7 (Emergency Defence Costs and Emergency Legal Representation Expenses), the **Insurer** is not liable to indemnify any **Insured** for any **Defence Costs** or **Legal Representation Expenses** unless the **Insurer** provides its prior written consent to the incurring of such **Defence Costs** or **Legal Representation Expenses**.
- (c) An **Insured** must not settle or make any admission, offer, payment or otherwise assume any contractual or other obligation in relation to any **Claim** or **Investigation** in respect of which the **Insurer** is, or may be, liable to indemnify any **Insured**, without the prior written consent of the **Insurer**, which shall not be unreasonably withheld. The **Insurer** is not liable to indemnify any **Insured** for any settlement, admission, offer, payment or assumed obligation unless the **Insurer** provides its prior written consent.

5.3 Multiple Claims and Related Conduct

For the purpose of determining cover under this **Policy**, all **Claims** and/or **Investigations** arising from:

- (a) one act, error or failure to act; or
- (b) acts, errors or failures to act which are the same or are attributable to the one source or originating or underlying cause,

shall be regarded as one **Claim** and/or **Investigation**.

5.4 Allocation

In the event of:

- (a) a **Claim** against an **Insured** which is not wholly covered by this **Policy**; and/or
- (b) a **Claim** against an **Insured** being also made against any party who is not an **Insured**,

the **Insurer** and the **Insured** shall then use their best endeavours to determine a reasonable allocation of **Loss** that is covered under this **Policy** and loss that is not covered, on the basis of their relative legal and financial exposures.

5.5 Mitigation and Co-operation

The **Insured** must at its own expense take all reasonable steps and precautions in doing all things reasonably practicable to avoid or minimise any actual or potential **Loss** arising from any actual or possible **Claim** and to avoid or minimise any actual or potential **Legal Representation Expenses** arising from any actual or possible **Investigation** under this **Policy**.

Each **Insured** must, at its own expense and on an ongoing basis, give the **Insurer** and any investigators or legal representatives appointed by the **Insurer** all information they reasonably require, to the extent it is reasonably available, and full co-operation and assistance in the conduct of any investigation (including investigations for the purpose of enabling the **Insurer** to determine its liability to provide an indemnity under this **Policy**), defence, settlement, avoidance or reduction of any actual or possible **Claim** or **Investigation** or any proceedings.

5.6 Disclosure of Information

Legal representatives appointed by the **Insurer** to act on an **Insured's** behalf shall be entitled to disclose to the **Insurer** any information obtained while so acting, except to the extent that such disclosure may result in any claim of legal professional privilege by the **Insured** in relation to that information being lost.

5.7 Disputes as to Defence and Settlement of Claims

- (a) If a dispute arises between the **Insurer** and an **Insured** as to whether a **Claim** or **Investigation** should be contested, neither the **Insurer** nor the **Insured** will require the other to contest the **Claim** or **Investigation** unless a Senior Counsel, or equivalent, (to be mutually agreed) recommends that the **Claim** or **Investigation** should be contested. The **Insurer** will brief the Senior Counsel, or equivalent, to advise, as an expert, on whether or not the **Claim** or **Investigation** should be contested and if not, on the amount for which the **Claim** or **Investigation** should be settled. In providing such advice and in making any recommendation as to settlement, the Senior Counsel, or equivalent, is entitled to take into account both legal and commercial considerations. The Senior Counsel, or equivalent, must have regard to the damages and costs that are likely to be recovered, the **Defence Costs** that will be incurred in contesting the **Claim** or **Investigation** and the prospects of the **Claim** or **Investigation** being successfully defended. The costs of obtaining this recommendation will be paid by the **Insurer**.
- (b) If the Senior Counsel, or equivalent, recommends that settlement of the **Claim** or **Investigation** should be attempted, then settlement of the **Claim** or **Investigation** must be attempted as recommended.
- (c) Where settlement is attempted in accordance with the Senior Counsel's, or equivalent's, recommendation but is unsuccessful, the **Insurer** will continue to indemnify the **Insured** subject to the terms and conditions of this **Policy**.
- (d) If a settlement recommended by the Senior Counsel, or equivalent, is acceptable to the claimant, but the **Insured** refuses to consent to such settlement, the **Insurer's** liability will be limited to the amount for which the **Claim** or **Investigation** could have been settled, plus the **Defence Costs** or **Legal Representation Expenses** incurred up to the date the refusal to consent was made.

5.8 Subrogation

If any payment is made by the **Insurer** in respect of a **Claim** or **Investigation** under this **Policy**, the **Insurer** will be subrogated to all rights of indemnity, contribution or recovery of the **Insured** in relation to that payment. No **Insured** may surrender any right, or settle any claim for indemnity, contribution or recovery, without the prior written consent of the **Insurer**, which shall not be unreasonably withheld.

The **Insurer** will not exercise its right of recovery under this Claims Condition against another natural person **Insured**, except where that **Insured** has committed, participated in or condoned a dishonest, fraudulent, malicious or criminal act or failure to act or where such natural person **Insured** is entitled to an indemnity in respect of any **Claim** or **Investigation** under any other insurance effected by the **Insured** or on the **Insured's** behalf, but only to the extent of the indemnity granted by such other insurance policy.

The **Insurer** will not exercise its right of recovery under this Claims Condition against another natural person **Insured**, except where that **Insured** has committed, participated in or condoned a dishonest, fraudulent, malicious or criminal act or failure to act or where such natural person **Insured** is entitled to an indemnity in respect of any **Claim** or **Investigation** under any other insurance effected by the **Insured** or on the **Insured's** behalf, but only to the extent of the indemnity granted by such other insurance policy.

6. General Conditions

6.1 Limit of Liability

- (a) The aggregate limit of the **Insurer's** liability for all **Loss** arising from any one **Claim** is the amount shown in Item 4. of the **Schedule**.
- (b) Any Sub-limit of Liability shown in this **Policy** will be the **Insurer's** maximum aggregate liability under such Sub-limit of Liability irrespective of the number of **Claims** or **Investigations**, the amount claimed or the number of **Insureds** who make a claim under this **Policy**. Any Sub-limit of Liability will be part of and not in addition to the **Limit of Liability** shown in Item 4. of the **Schedule**.
- (c) The **Insurer's** maximum aggregate liability under this **Policy** for all **Loss** arising from all **Claims** and all **Legal Representation Expenses** arising from all **Investigations**, irrespective of the number of **Claims** or **Investigations** under this **Policy**, the amount claimed or the number of **Insureds** who make claims, is the **Limit of Liability** shown in Item 4. of the **Schedule**.

6.2 Excess

The **Insured** shall pay the first amount of each and every **Claim** or **Investigation** or benefit provided under this **Policy**, as shown in Item 5., 5.(a), 5.(b) and/or 5.(c) of the **Schedule** as the **Excess**.

6.3 Territorial Limits

This Policy applies anywhere in the world except for any **Claim** and/or **Investigation** resulting from the conduct of **Professional Services** which occurred within the territorial limits of the United States of America or Canada and their territories or protectorates.

6.4 Jurisdictional Limits

Subject to General Condition 6.3 (Territorial Limits) and to the extent permitted by law, cover extends to **Claims** or **Investigations** anywhere in the world, except for **Claims** or **Investigations**:

- (a) involving the application of the law of the United States of America or Canada or their territories or protectorates; or
- (b) brought in a court of law in the United States of America or Canada or their territories or protectorates; or
- (c) arising out of the enforcement of any judgement, order or award made in any court of law in the United States of America or Canada or their territories or protectorates.

6.5 Policy Construction and Interpretation

In this **Policy**, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa; and
- (b) headings are merely descriptive and not to aid interpretation; and
- (c) if a word or expression is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (d) references to an amount of money are references to that amount in Australian dollars unless otherwise provided; and
- (e) bolded words used in this **Policy** have the meanings specified in Section 7. (Definitions).

6.6 Retroactive Date

If a **Retroactive Date** is shown in Item 6. of the **Schedule**, this **Policy** will not cover any **Claim** or **Investigation** where the **Professional Services** leading to such **Claim** or **Investigation** were, or were alleged to have been, provided or required to be provided before that **Retroactive Date**.

6.7 Authorisation

The first entity, partnership or company identified in Item 1. of the **Schedule** agrees to act on behalf of all **Insureds** with respect to:

- (a) the giving and receiving of all notices given under this **Policy** including as to cancellation; and
- (b) the payment of premiums and the receiving of any return premiums that may become due under this **Policy**; and
- (c) the negotiation, agreement to and acceptance of endorsements; and
- (d) the receipt of all amounts payable by the **Insurer** under this **Policy**.

Each **Insured** agrees that the first entity, partnership or company identified in Item 1. of the **Schedule** will act on its or their behalf and agrees to be bound by all acts or failures to act of the first entity, partnership or company identified Item 1. of the **Schedule**.

6.8 Cancellation

The **Insureds** may cancel this **Policy** only by the first entity, partnership or company identified in Item 1. of the **Schedule** giving thirty (30) days' written notice to the **Insurer**. If there are no **Claims** or **Circumstances** notified to the **Insurer** under this **Policy**, the **Insurer** will allow a refund of unearned premium calculated on a pro-rata basis.

The **Insurer** may cancel this **Policy** for non-payment of premium by thirty (30) days' notice given to the **Insured** and in accordance with the requirements of any applicable legislation. If there are no **Claims** or **Circumstances** notified to the **Insurer** under this **Policy**, the **Insurer** will allow a refund of unearned premium calculated on a pro-rata basis.

6.9 Governing Law

This **Policy** is governed by, and interpreted in accordance with, the laws of the Commonwealth of Australia and the State or Territory of the office of the **Insurer** from which the **Policy** was issued. Disputes relating to interpretation of this **Policy** must be submitted to the exclusive jurisdiction of the Courts of that State or Territory.

6.10 Other Insurance

- (a) If any **Loss** arising from a **Claim** or **Investigation** is insured under any other policy (whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise) entered into by or effected

on behalf of the **Insured**, or under which the **Insured** is a beneficiary, whether prior or current, then to the extent permitted by the Insurance Contracts Act 1984 (Cth), this **Policy**, subject to its terms, exclusions and conditions, will only cover **Loss** to the extent that the amount of such **Loss** is in excess of the amount of such other insurance.

- (b) Paragraph (a) above does not apply to such other insurance that is written specifically as excess insurance over the **Limit of Liability** provided in this **Policy**.
- (c) If the other insurance is provided by the **Insurer** or any other member, company, associate or affiliate of the **Insurer**, and it covers **Loss** or other amounts covered by this **Policy**, the **Limit of Liability** under this **Policy** in respect of that **Loss** or other amounts shall be reduced by any amount paid by the **Insurer** (or member company, associate or affiliate of the **Insurer**) under such other insurance in respect of the same **Loss** or amount.

6.11 Severability

For the purposes of determining cover to a natural person **Insured** under this **Policy**:

- (a) The **Proposal** will be construed as a separate proposal by each natural person **Insured**. No statements or particulars in the **Proposal**, and no fact pertaining to or information possessed by any natural person, will be imputed to any other natural person **Insured**.

For the purposes of determining cover to the **Company** under this **Policy**:

- (a) only facts pertaining to and knowledge possessed by any chief executive officer, chief operating officer, chief financial officer or the holder of any equivalent position in any jurisdiction of an the **Company** shall be imputed to such **Company**; and/or
- (b) imputation which arises by operation of law will be imputed to such **Company**.

6.12 Confidentiality

In the event of a **Claim** or **Investigation**, the **Insured** must not disclose the terms, the nature or the **Limit of Liability** or the premium payable under this **Policy**, to any third party, except where the **Insurer** provides written consent, such consent not to be unreasonably withheld, or disclosure is required by law.

6.13 GST

Where the **Insurer** makes payment under this **Policy**:

- (a) the amount of the payment will be reduced by the amount of any input tax credit to which the **Insured** is or may, in the reasonable opinion of the **Insurer**, be entitled to claim; and
- (b) the **Insured** must inform the **Insurer** of the extent of any entitlement to an input tax credit for the premium at or before the time a claim is made under this **Policy**.

If the **Insured** makes a claim under this **Policy**, it must inform the **Insurer** of its Australian Business Number if it has one.

The amount of the applicable **Excess** is calculated after deduction of the amount of any input tax credit that the **Insured** is or may, in the reasonable opinion of the **Insurer**, be entitled to claim.

7. Definitions

7.1 **Act of Terrorism** means:

- (a) an act, including but not limited to, the use of force, violence and/or the threat of force or violence, by any person or group(s) of persons, whether acting alone, on behalf of, or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with,

political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear; or

- (b) any action taken in controlling, preventing, suppressing or in any way relating to anything in (a) above regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

7.2 **Action of the Sea** means waves, tidal waters or spray from any of these even if it is driven by wind. This includes natural and man made bodies of water including but not limited to oceans, seas, canals, harbours, bays and rivers.

7.3 **Agent** means any company, entity or natural person who has or had a written contract with the **Company** to perform **Professional Services**, but only in relation to the performance of **Professional Services** for or behalf of the **Company**.

7.4 **Aircraft** means any craft or thing made or intended to fly or move in or through the atmosphere or space.

7.5 **Circumstance** means any fact, matter or circumstance which gives rise to a **Claim** or **Investigation** or has the potential to give rise to a **Claim** or **Investigation**.

7.6 **Cladding** means cladding or a cladding system, including but not limited to, the panels, lining, attachment or finishes of any cladding or cladding system, whether or not made of any composite materials, that is applied to a building and includes any materials used in the installation of the cladding including fasteners, screws, epoxies, adhesives, sealants, caulking and coatings.

7.7 **Claim** means:

- (a) the receipt by the **Insured** of any written demand for civil compensation or civil damages or non-monetary civil relief made against the **Insured**; or
- (b) any originating legal or arbitral process, cross claim, counterclaim or third party notice served upon the **Insured** which contains a demand made against the **Insured** for civil compensation or civil damages or non-monetary civil relief

arising out of any act, error, failure to act, misstatement, misleading statement, neglect, breach of duty in the conduct of (including a failure to perform) the **Professional Services**.

7.8 **Company** means the entity, partnership or company identified in Item 1. of the **Schedule** and any **Subsidiary**. Where two or more entities are specified, the **Company** means each of them, unless the context otherwise requires.

7.9 **Computer System** means computer hardware, software, firmware, and the data stored on such hardware, software or firmware, as well as associated mobile devices, input and output devices, data storage devices, networking equipment and storage area network or other electronic data backup facilities, including SCADA and ICS systems.

7.10 **Computer Virus** means computer instructions placed on a **Computer System** without the owner or user's knowledge or consent that are designed to harm the **Computer System**. **Computer Virus** includes malicious codes, malware, Trojan horses, worms and time or logic bombs.

7.11 **Continuity Date** means the date shown in Item 7. of the **Schedule**.

7.12 **Cyber and Privacy Infringement Liability** means civil liability arising out of:

- (a) any **Internet** content created or hosted by the **Insured**;
- (b) the **Insured's** infringement of any right to privacy;
- (c) the **Insured's** breach of confidence or misuse of confidential information held on its **Computer System**; and/or
- (d) the **Insured's** failure to prevent a party, other than an **Insured**, from unauthorised access to, use

of or tampering with **Computer Systems** including:

- (i) **Hacker Attacks**;
- (ii) **Computer Virus** attacks;
- (iii) **Theft of Electronic Data**; and
- (iv) any inadvertent transmission by the **Insured** to a third party of any **Computer Virus**.

7.13 **Defence Costs** means reasonable legal and other professional fees, costs and expenses incurred by and with the prior written consent of the **Insurer**, not to be unreasonably withheld or delayed, that are incurred to defend or appeal a covered **Claim**.

7.14 **Dishonesty** means any dishonest and/or fraudulent act, error or failure to act of an employee not condoned by the **Insured** (whether expressly or implicitly) and that results in liability of an **Insured**.

7.15 **Documents** means documents of any nature except money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other form of negotiable instrument, legally owned by a client of the **Insured**.

7.16 **Emergency Defence Costs** means **Defence Costs** but only where the prior written consent from the **Insurer** could not have been obtained.

7.17 **Emergency Legal Representation Expenses** means **Legal Representation Expenses** but only where the prior written consent from the **Insurer** could not have been obtained.

7.18 **Employee** means:

- (a) each person who was, is or becomes employed by the **Company** in the ordinary course of the **Professional Services** and who is paid by the **Company** by way of salary or wages; or
- (b) a volunteer working without fee or reward in the ordinary course of the **Professional Services**, provided that the performance of whose duties is subject to the direction and control of the **Company**.

7.19 **Excess** means the amounts shown in Items 5, 5.(a), 5.(b) or 5.(c) of the **Schedule**.

7.20 **Hacker Attack** means the gaining of access to or use of any **Computer Systems** by a person not authorised to do so or in an unauthorised manner.

7.21 **Insolvency Event** means:

- (a) the appointment of an administrator, special manager, provisional liquidator or liquidator to the **Company**; or
- (b) where (except for the purpose of a solvent reconstruction or amalgamation) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
 - (i) the winding up, dissolution or administration of the **Company**; or
 - (ii) the **Company** entering into an arrangement, amalgamation, compromise, composition or reconstruction with or assignment for the benefit of its creditors or a class of creditors.

7.22 **Insured** means:

- (a) the **Company**; and
- (b) each **Principal**, but only in respect of work performed in the capacity of a **Principal** of the **Company**; and

- (c) each **Employee**, but only in respect of work performed in the capacity of an **Employee** of the **Company**; and
- (d) the estate, heirs or legal representatives of each deceased or legally incapacitated **Principal** or **Employee** but only to the extent that such **Principal** or **Employee** would have been covered under this **Policy** in the absence of such death or legal incapacity, as the case may be, and only in respect of work performed by the **Principal** or **Employee** in their capacity as a **Principal** or **Employee** of the **Company**; and
- (e) the lawful spouse, domestic partner or de facto of each **Principal** or **Employee** but only to the extent that such **Principal** or **Employee** would have been covered under this **Policy**, as the case may be, and only in respect of work performed by the **Principal** or **Employee** in their capacity as a **Principal** or **Employee** of the **Company**.

7.23 **Insurer** means Chubb Insurance Australia Limited (ABN: 23 001 642 020 AFSL: 239687).

7.24 **Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, company business and any other trade secrets, domain names and inventions.

7.25 **Internet** means the worldwide public network of computer networks that enable the transmission of electronic data between different users.

7.26 **Investigation** means a formal or official investigation, examination or inquiry before any duly constituted court or tribunal or other body having the power to compel the attendances of witnesses (including any hearing before any disciplinary body of any professional institution or association) against any **Insured** arising out of **Professional Services** other than any industry-wide investigation and/or routine supervision, inspection, compliance or similar review.

7.27 **Joint Venture** means any enterprise carried on in common by the **Company** with a third party or parties (not being an **Insured** under this **Policy**).

7.28 **Limit of Liability** means the amount shown in Item 4. of the **Schedule**.

7.29 **Legal Representation Expenses** means the reasonable legal costs or related professional fees incurred by or on behalf of an **Insured** (but not including any remuneration of any **Principal** or **Employee**) with the prior written consent of the **Insurer**, not to be unreasonably withheld or delayed, directly in connection with an **Insured** co-operating with or being represented at an **Investigation**.

7.30 **Loss** means all amounts which an **Insured** becomes legally obligated to pay in respect of a **Claim** (including but not limited to any damages, judgments entered or settlements reached) and **Defence Costs**.

Loss does not include:

- (a) aggravated, punitive or exemplary damages; or
- (b) fines or penalties imposed by law; or
- (c) costs incurred by the **Insured** in complying with any order for, grant of, or agreement to provide injunctive or non-monetary relief; or
- (d) any amount which constitutes reduction, set off or return of fees or expenses, in whole or in part, paid to or charged by an **Insured**; or
- (e) any internal or overhead expenses of the **Company** or the cost of any **Insured's** time; or
- (f) taxes or sums payable in relation to taxes; or
- (g) any matters which are uninsurable under any applicable law or where the **Claim** is made; or
- (h) any liquidated damages which exceed actual damages; or

- (i) that part of any damages awarded or settlement reached which comprises an amount payable by the **Insured** for loss that is consequential or indirectly associated with the **Loss** including loss of profit; loss of use of any plant or facility; loss of earning capacity; loss of opportunity; loss of goodwill; delay or interruption of business; loss of contract; depreciation of any kind; interest or loss due to delay.
- 7.31 **Policy** means the contract of insurance between the **Insurer** and the **Insured** which comprises this policy wording, the **Proposal**, the **Schedule** and any endorsement issued by the **Insurer** varying the policy cover.
- 7.32 **Policy Period** means the period shown in Item 2. of the **Schedule**.
- 7.33 **Pollutant** means any contaminant, toxic, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, asbestos, asbestos-containing materials, fumes, fungi, acids, alkalis, any nuclear or atomic operation/facility, any installation, reactor, assembly, component, device, any explosive, radioactive or other hazard material, chemicals, fuels and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 7.34 **Pollution** means the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **Pollutant** whether in solid, liquid, gas, odour, noise, vibration, electromagnetic radiation, ionising radiation, thermal or other form at any time.
- 7.35 **Principal** means where the **Company** is or was:
- (a) a company, each director of that company; and
 - (b) a partnership, each partner of that partnership and each person held out as a partner; and
 - (c) a sole practitioner, that practitioner,
- and includes each former **Principal** and each person who becomes a **Principal** during the **Policy Period**.
- 7.36 **Professional Services** means those services that the **Insured** is legally qualified to perform for others in the **Insured's** capacity as an architect, engineer, land surveyor, landscape architect, interior designer, land planner, space planner, expert witness, or technical consultant and services as a Green Star rating system or any equivalent system accredited professional with respect to the foregoing listed services, or as otherwise defined by Item 3. of the **Schedule**.
- 7.37 **Proposal** means the written proposal and any supplementary proposal including any statements and information contained in such proposal(s) and any material relied upon by the **Insurer** in issuing cover under this **Policy**, or any policy issued by the **Insurer** of which this **Policy** is a renewal.
- 7.38 **Proportionate Liability Legislation** means the Civil Liability Act 2002 (NSW), Pt 4; Wrongs Act 1958 (Vic) Pt IVAA; Civil Liability Act 2002 (WA) Pt 1F; Civil Liability Act 2003 (Qld) Pt 2; Civil Law Wrongs Act 2002 (ACT) Ch 7A; Proportionate Liability Act (NT); Civil Liability Act 2002 (Tas) Part 9A; Law Reform (contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 2; Competition and Consumer Act 2010 (Cth), Part VIA; Development Act 1993 (SA) s72; Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and any applicable similar legislation, and all as amended.
- 7.39 **Relative** means:
- (a) any legal spouse, domestic partner or de facto; or
 - (b) any parent, or parent of the spouse, domestic partner or de facto; or
 - (c) any sibling or child.
- 7.40 **Retroactive Date** means the date shown in Item 6. of the **Schedule**.
- 7.41 **Schedule** means the schedule the **Insurer** issues to the **Company** with this **Policy** or any subsequent or amended version of that schedule.

7.42 **Subsidiary** means any entity:

- (a) over which the **Company** is in a position to exercise actual direction and control; or
- (b) which is deemed to be a subsidiary of the **Company** by virtue of any applicable legislation or law.

7.43 **Theft of Electronic Data** means the unauthorised taking or misuse of information by a third party (other than an **Insured**) that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device which is intended to interact with a **Computer System**, including account information, confidential information, proprietary information and personal information while stored in a **Computer System** maintained by an **Insured** to reasonable security standards and back up procedures.

Important Notices

Claims Made Insurance

The cover provided by the Policy is provided on a claims made basis. This means that it only covers claims made against you and notified in writing to Chubb during the period of insurance. The Insurance Contracts Act 1984 (Cth) provides that where an insured gives notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as reasonably practicable after the insured became aware of those facts the insurer is not relieved of liability under the policy in respect of the claim, when made, solely by reason that the claim is made after expiry of the policy. This is a right which arises solely under the Act and not under the insurance contract. The right does not arise unless the notice in writing is given before the Policy expires.

Change of Risk or Circumstances

You should advise Chubb as soon as reasonably practicable of any change to your normal business as disclosed to Chubb prior to entering into the contract of insurance. This includes every change materially affecting the facts or circumstances existing at the commencement of this insurance, or at any subsequent renewal date.

Privacy Statement

In this Statement “We”, “Our” and “Us” means Chubb Insurance Australia Limited (**Chubb**).

“You” and “Your” refers to Our customers and prospective customers as well as those who use Our Website.

This Statement is a summary of Our Privacy Policy and provides an overview of how We collect, disclose and handle Your Personal Information. Our Privacy Policy may change from time to time and where this occurs, the updated Privacy Policy will be posted to [Our website](#).

Chubb is committed to protecting Your privacy. Chubb collects, uses and retains Your Personal Information in accordance with the requirement of the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (**APPs**), as amended or replaced from time-to-time.

Why We collect Your Personal Information

The primary purpose for Our collection and use of Your Personal Information is to enable Us to provide insurance services to You.

Sometimes, We may use Your Personal Information for Our marketing campaigns and research, in relation to new products, services or information that may be of interest to You.

How We obtain Your Personal Information

We collect Your Personal Information (which may include sensitive information) at various points including, but not limited to, when You are applying for, changing or renewing an insurance policy with Us or when We are processing a claim. Personal Information is usually obtained directly from You, but sometimes via a third party such as an insurance intermediary or Your employer (e.g. in the case of a group insurance policy). Please refer to Our Privacy Policy for further details.

When information is provided to Us via a third party We use that information on the basis that You have consented or would reasonably expect Us to collect Your Personal Information in this way. We take reasonable steps to ensure that You have been made aware of how We handle Your Personal Information.

When do We disclose Your Personal Information?

We may disclose the information We collect to third parties, including:

- the policyholder (where the insured person is not the policyholder, i.e., group policies);
- service providers engaged by Us to carry out certain business activities on Our behalf (such as claims assessors, call centres in Australia, online marketing agency, etc);

- intermediaries and service providers engaged by You (such as current or previous brokers, travel agencies and airlines);
- government agencies (where We are required to by law);
- other entities within the Chubb group of companies such as the regional head offices of Chubb located in Singapore, UK or USA (Chubb Group of Companies); and
- third parties with whom We (or the Chubb Group of Companies) have sub-contracted to provide a specific service for Us, which may be located outside of Australia (such as in the Philippines or USA). These entities and their locations may change from time-to-time. Please contact Us, if You would like a full list of the countries in which these third parties are located.

In the circumstances where We disclose Personal Information to the Chubb Group of Companies, third parties or third parties outside Australia We take steps to protect Personal Information against unauthorised disclosure, misuse or loss.

Your decision to provide Your Personal Information

In dealing with Us, You agree to Us using and disclosing Your Personal Information, which will be stored, used and disclosed by Us as set out in this Privacy Statement and Our Privacy Policy.

Access to and correction of Your Personal Information

Please contact Our customer relations team on 1800 815 675 or email CustomerService.AUNZ@chubb.com if You would like:

- a copy of Our Privacy Policy, or
- to cease to receive marketing offers from Us or persons with whom We have an association.

To request access to, update or correct Your Personal Information held by Chubb, please complete this [Personal Information request form](#) and return to:

Email: CustomerService.AUNZ@chubb.com

Fax: + 61 2 9335 3467

Address: GPO Box 4907 Sydney NSW 2001

How to Make a Complaint

If You have a complaint or would like more information about how We manage Your Personal Information, please review Our Privacy Policy for more details, or contact:

Privacy Officer

Chubb Insurance Australia Limited

GPO Box 4907 Sydney NSW 2001

+61 2 9335 3200

Privacy.AU@chubb.com.

General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice (**Code**). The objectives of the Code are to further raise standards of service and promote consumer confidence in the general insurance industry. Further information about the Code and Your rights under it is available at codeofpractice.com.au and on request. As a signatory to the Code, We are bound to comply with its terms. As part of Our obligations under Parts 9 and 10 of the Code, Chubb has a [Customers Experiencing Vulnerability & Family Violence Policy](#) (Part 9) and a [Financial Hardship Policy](#) (Part 10).

Complaints and Dispute Resolution Process

We understand that You could be dissatisfied with Our organisation, Our products and services, or the complaints handling process itself. We take all Our customer's concerns seriously and have detailed below the complaints process that You can access.

Complaints and Customer Resolution Service

Contact Details

If You are dissatisfied with any aspect of Your relationship with Chubb including Our products or services and wish to make a complaint, please contact Our Complaints and Customer Resolution Service (**CCR Service**) by post, phone, fax, or email, (as below):

Complaints and Customer Resolution Service
Chubb Insurance Australia Limited
GPO Box 4065
Sydney NSW 2001
P +61 2 9335 3200
F +61 2 9335 3411
E complaints.AU@chubb.com

Our CCR Service is committed to reviewing complaints objectively, fairly and efficiently.

Process

Please provide Us with Your claim or policy number (if applicable) and as much information as You can about the reason for Your complaint.

Our response

We will acknowledge receipt of Your complaint within one (1) business day of receiving it from You.

We will investigate Your complaint and keep You informed of the progress of Our investigation at least every ten (10) business days and will make a decision in relation to Your complaint in writing within thirty (30) calendar days. If We are unable to make this decision within this timeframe, We will provide You with a reason for the delay and advise of Your right to take Your complaint to the Australian Financial Complaints Authority (**AFCA**) as detailed below, subject to its Rules. If Your complaint falls outside the AFCA Rules, You can seek independent legal advice or access any other external dispute resolution options that may be available to You.

To the extent allowable at law, if You request copies of the information We relied on to make a decision about Your complaint, We must provide it within ten (10) business days of Your request. Please see the General Insurance Code of Practice 2020 (codeofpractice.com.au) or contact Us for further details.

Please note that if We have resolved Your complaint to Your satisfaction by the end of the fifth (5th) business day after We have received it, and You have not requested that We provide You a response in writing, We are not required to provide a written response. However, this exemption does not apply to complaints regarding a declined claim, the value of a claim, or about financial hardship.

External Dispute Resolution

If You are dissatisfied with Our complaint determination, or We are unable to resolve Your complaint to Your satisfaction within thirty (30) days, You may refer Your complaint to AFCA, subject to its Rules.

AFCA is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission (**ASIC**). We are a member of this scheme and We agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to consumers.

You may contact AFCA at any time at:

Australian Financial Complaints Authority

GPO Box 3
Melbourne VIC 3001
P 1800 931 678 (free call)
F +61 3 9613 6399
E info@afca.org.au
W www.afca.org.au

Time limits may apply to complain to AFCA and so You should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to Your circumstances expires.

About Chubb in Australia

Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries and territories, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to a diverse group of clients. As an underwriting company, we assess, assume and manage risk with insight and discipline. We service and pay our claims fairly and promptly. The company is also defined by its extensive product and service offerings, broad distribution capabilities, exceptional financial strength and local operations globally. Parent company Chubb Limited is listed on the New York Stock Exchange (NYSE: CB) and is a component of the S&P 500 index. Chubb maintains executive offices in Zurich, New York, London, Paris and other locations, and employs approximately 33,000 people worldwide.

Chubb, via acquisitions by its predecessor companies, has been present in Australia for 100 years. Its operation in Australia (Chubb Insurance Australia Limited) provides specialised and customised coverages, including Business Package, Marine, Property, Liability, Energy, Professional Indemnity, Directors & Officers, Financial Lines, Utilities, as well as Accident & Health insurance, to a broad client base, including many of the country's largest companies. Chubb also serves successful individuals with substantial assets to insure as well as individuals purchasing travel and personal accident insurance. With five branches and more than 800 staff in Australia, it has a wealth of local expertise backed by its global reach and breadth of resources.

More information can be found at www.chubb.com/au.

Contact Us

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