



**ASR**  
underwriting  
AGENCIES

**Policy Wording**

# **Tourism Combined Liability**

Fines and Penalties and Supplementary Legal Expenses

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 2915

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## **ASR Underwriting Agencies Pty Ltd**

ABN 84 113 542 233      AFSL 291522

25 Main St Beenleigh Qld 4207

PO Box 491 Beenleigh Qld 4207

Ph 07 34423333 Fax 07 38076839

Email [enquiries@asruw.com.au](mailto:enquiries@asruw.com.au)

Website <http://www.asruw.com.au>

Version: 010817

Effective: 01/08/2017



## Important Information

### Insurer

The Policy is underwritten by Certain Underwriters at Lloyds of London who are referred to throughout this document as "We, Our or Us".

This is the Policy wording. It tells you:

- what the Policy covers,
- what the Policy does not cover,
- how to make a claim,
- Excesses, and
- other conditions.

Details of the insurance which are particular to you are shown on the Certificate which we send to you with the Policy wording. The date when your insurance cover ends is particularly important.

Please read this Policy carefully and retain it in a safe place.

How Goods and Services Tax affects any payments we make. The amount of premium payable by you for this policy includes an amount on account of the GST on the premium. When we pay a claim, your GST status will determine the amount we pay.

When you are:

- a. not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b. registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/ limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

### 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.

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.

## **Evidence of value**

Please retain receipts of purchase or proof of the value of all property insured by this Policy so that you can prove the amount of any loss if you have to claim under this Policy.

## **Cooling-off information**

If you want to return your insurance after your decision to buy it, you may cancel it and receive a full refund. To do this you may notify your Financial Services Provider electronically or in writing within 21 days from the date the Policy commenced.

This cooling-off right does not apply if you have made or are entitled to make a claim. Even after the cooling-off period ends, you still have cancellation rights however your Financial Services Provider may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

If your Policy is for an event that will start and finish within the 21 day cooling-off period, you can only exercise your right before the event starts or the expiry of the cooling-off period, whichever is the earlier. For example, for travel insurance, the commencement of the journey is the event.

Preventing our right of recovery if you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy we will not cover you under this Policy for that loss, damage or liability.

## **Third Party Interests**

You must inform us of the interests of all third parties (eg. financiers, lessors) to be covered by this insurance. We will protect their interests only if you have informed us of them and we have noted them on the Certificate.

## **Our Agreement**

We agree to provide you with the insurance cover set out in each of the Policy sections which you select and which are listed in the Schedule. You have paid or agree to pay us the premium set out in the current Schedule. The insurance cover is in force for the period of insurance set out in the Schedule. We will cover you for loss, damage and liability occurring during that period of insurance, subject to the terms, conditions, limitations and exclusions of the policy.

We will not pay any more than the sum insured or limit of liability for each section which is shown in the Schedule. We will not pay the excesses shown in the Schedule. If any loss or damage leads to a claim under more than one Section of this Policy, you must pay the highest applicable excess, but you need to pay only one excess.

## **General definitions applying to all sections of this Policy**

Wherever the words listed below are used in the Policy wording, they mean what is set out below:

### **Word Or Term Meaning Applying To This Policy**

*Australia* the Commonwealth of Australia, its dependencies and Territories.

*Business* the trade or occupation described in the Schedule applicable to each section of the policy is carried on at and from the location (and no other for the purpose of this insurance).

*Business hours* your office and working hours (including overtime) during which you or your employees are on the location for the purpose of your business.

*Excess* the amount specified in the Schedule which is applicable for each section of the policy, payable by you on each and every claim arising out of one event or occurrence under that Policy section.

Should more than one excess be payable under this Policy for any claim or series of claims arising from the one event, such excesses shall not be aggregated and the highest single level of excess only shall apply.

*Period of insurance* the duration of this Policy for the period specified in the Schedule applicable to each section of the policy, or any renewal period for which the appropriate premiums are paid in each case.

*Policy* this Policy together with any Schedule and endorsement.

*Policy Schedule* the current Schedule of Insurance which has been numbered and issued by or on behalf of us.

*We, Us or Our* - Certain Underwriters at Lloyds of London

*You or Your* - the Insured named in the Schedule and any subsidiary and related bodies corporate (as defined in the Corporations Act 2001) now existing or hereafter constituted.

## **General Insurance Code of Practice**

We subscribe to the General Insurance Code of Practice.

The purpose of the Code is to raise the standards of practice and service in the general insurance industry. The Code aims to:

- Constantly improve claims handling in an efficient, honest and fair manner;

- Build and maintain community faith and trust in the financial integrity of the insurance industry; and
- Provide helpful community information and education about general insurance.

## Complaints and Dispute Resolution Process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on (07) 3442 3333.

We will ask you to complete a Complaint Report Form and your complaint will be reviewed by our Internal Review Panel free of charge.

We will keep you informed of the progress of our review at least every 10 working days and give you our response in writing within 15 working days provided we have all necessary information and have completed any investigation required.

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact the Compliance Manager at:

Lloyd's Australia Limited  
Level 9, 1 O'Connell Street,  
Sydney NSW 2000

Telephone: (02) 9223 1433

You will be advised whether your dispute will be handled by either Lloyd's Australia or the Complaints Department at Lloyd's in London.

Where you are a retail client and your dispute is eligible for referral to the Financial Ombudsman Service (FOS), your dispute will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.

FOS will review our decision in accordance with their terms of reference. You are not bound by their decision. However, we are bound to act immediately on FOS's decision. This is a free service provided by an independent body. Brochures outlining the operations of FOS are available from us or the Insurance Council of Australia in your State or Territory. You can phone the FOS from anywhere in Australia on 1800 367 287 or write to them at:

Financial Ombudsman Services Limited  
Level 12  
717 Bourke St Docklands  
Melbourne Vic 3008

Email: [info@fos.org.au](mailto:info@fos.org.au)

Where you are a retail client and your dispute is not eligible for referral to the FOS, or where you are a wholesale client, Lloyd's Australia will refer your dispute to the Complaints Department at Lloyd's, who will then liaise directly with you.

In this case, you may be eligible for referral to the Financial Ombudsman Service (UK). Such referral must occur within 6 months of the final decision by the Complaints Department at Lloyd's. Further details will be provided by the Complaints Department with their final decision to you.

Your dispute will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of our review of your dispute at least every 10 business days. The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your dispute within 15 business days of receipt, provided we have received all necessary information and have completed any investigation required.

This service is free of charge to policyholders

## Privacy Policy Statement

We want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

### INFORMATION WE COLLECT

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

### INFORMATION WE DISCLOSE

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

### CONFIDENTIALITY AND SECURITY

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

## RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

You have a right to request access to or correction of your personal information that is in our possession.

## CONTACTING US

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request.

**IF FOS HAS NO JURISDICTION OR IF YOU ARE UNHAPPY WITH ITS DETERMINATION THEN THE FOLLOWING LLOYDS ALTERNATIVE DISPUTE RESOLUTION PROCEDURE IS AVAILABLE** In the event that a dispute arises between We and You out of or otherwise in relation to this agreement, then:

- a. Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- b. If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
  - b.1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
  - b.2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
    - b.2.1. will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
    - b.2.2. will act as an expert and not as an arbitrator;
    - b.2.3. will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
    - b.2.4. will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
    - b.2.5. will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- c. Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street,  
Sydney NSW 2000  
Australia

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- d. Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- e. Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- f. Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

## Conditions

### 1. OBSERVANCE OF TERMS

You must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by You shall be a condition precedent to the Our liability to make any payment under this Policy.

We shall only be liable to bear GST to the extent that GST is irrecoverable by You. For the avoidance of doubt, any element of GST which We are obliged to pay shall be encompassed within the Limit of Indemnity.

### 2. CLAIMS CONDITIONS

- 2.1. You must notify Us in writing as soon as possible of any Occurrence which may give rise to a claim under this Policy.
- 2.2. You shall not admit liability for or negotiate the settlement of any claim, or incur any Defence Costs, without Our written consent. You shall do nothing which may prejudice Our rights including but not limited to preserving all possible defences, and rights of contribution or indemnity, in respect of a claim.
- 2.3. You must, at your own expense, provide Us with all assistance and co-operation reasonably required by Us to enable Us to determine Your entitlement to indemnity under the Policy, and in the investigation, settlement and/or defence of any claim.
- 2.4. We reserve the right, but do not have an obligation, to take control of and conduct in the Insured's name the investigation, settlement or defence of any claim. We shall be entitled to prosecute for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any such claim and the Insured shall give all such information and assistance as We may require.
- 2.5. A claim against You will only be defended if in Our opinion there is a reasonable prospect of success and after taking account of the commercial considerations and economics of defending such claim.

### 3. GENERAL CONDITIONS APPLICABLE TO ALL POLICIES

#### 3.1. PRECAUTIONS BY YOU

You at your own expense shall:

- 3.1.1. take all reasonable precautions to prevent Personal Injury or Property Damage and cease any activity which may give rise to liability under this Policy;
- 3.1.2. exercise care in the selection and supervision of employees;
- 3.1.3. as soon as possible after discovery cause any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require;
- 3.1.4. comply with all statutory requirements and other safety regulations imposed by any authority.

#### 3.2. ALTERATION

You shall give notice to Us as soon as possible of any alteration which materially affects the risk.

#### 3.3. CANCELLATION

We may cancel this Policy in accordance with the Insurance Contracts Act 1984 (Cth).

#### 3.4. DISCHARGE OF LIABILITY

We may at any time pay to You in connection with any claim under this Policy to which an Indemnity Limit applies the amount of such limit (after deduction of any sums already paid) or any lesser amount for which such claim can be settled and upon such payment being made by Us shall relinquish the conduct and control of and be under no further liability in connection with such claim.

#### 3.5. PROPORTIONMENT OF DEFENCE COSTS

Except where the Indemnity Limit is inclusive of Defence Costs if a payment exceeding the Indemnity Limit has to be made to dispose of a claim Our liability to pay all Defence Costs in connection therewith shall be limited to such proportion of the said Defence Costs as the Indemnity Limit bears to the amount required to be paid to dispose of such claim.

#### 3.6. ADJUSTMENT OF PREMIUM

If the premium has been calculated on estimates given by You the Insured shall keep an accurate record containing all relevant particulars which shall be available to Us for inspection.

Within one month of the expiry of each Period of Insurance You shall supply to Us an accurate statement in the form required so that the premium for that period can be calculated and the difference paid by or allowed to the Insured as the case may be subject to any minimum premium specified in the Schedule to this Policy.

Should You fail to supply such a statement within one month of the expiry of the Period of Insurance We shall be entitled if they so wish to charge an additional premium in respect of that Period of Insurance.

### 3.7. OTHER INSURANCES

- 3.7.1. To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover a claim, liability and Defence Costs to the extent that such amount is in excess of any indemnity or cover available to You in respect of that claim, liability or Defence Costs under any other policy entered into by You.
- 3.7.2. To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover a claim, liability and Defence Costs to the extent that such amount is in excess of any indemnity or cover available to You in respect of that a claim, liability and Defence Costs under any other policy effected on behalf of You or under which the You are a beneficiary.
- 3.7.3. Neither clause 3.7.1 nor 3.7.2 applies to such other insurance that is written only as specific excess insurance over the Indemnity Limit provided in this Policy.

### 3.8. GOVERNING LAW AND JURISDICTION

- 3.8.1. any dispute concerning the interpretation of the terms, Conditions, limitations and/or Exclusions contained herein is understood and agreed by both You and Us to be governed by Australian law.
- 3.8.2. Any phrase or word in this Policy will be interpreted in accordance with the law of Australia. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

### 3.9. SUBROGATION

We shall be subrogated to Your rights of recovery in relation to any claim paid or payable under this Policy. You shall co-operate fully with Us in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from Our rights of subrogation.

### 3.10. ASSIGNMENT

- 3.10.1. You shall not be entitled to assign the benefit of this Policy without Our prior written consent.
- 3.10.2. This Policy shall be for the exclusive benefit of You and in no event shall anyone other than the You have any right of action under this Policy.

## **NOTICE RELATING TO TERRORISM**

### AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE

We have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".



## Policy One - Public & Products Liability Insurance

### 1. OPERATIVE CLAUSE

We will indemnify You against Your liability to pay damages (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part).

This indemnity applies only to such liability as defined by each insured Section of this Policy arising out of the conduct of the Business stated in the Schedule, subject always to the terms, Conditions and Exclusions of such Section and of the Policy as a whole.

For the purpose of determining the indemnity granted in Policy One the words in clauses 4.1 to 4.7 have the following definitions.

#### 1.1. "Personal Injury" means

- 1.1.1. death, bodily injury, illness, disease, disability, shock, fright, mental anguish or mental injury
- 1.1.2. false arrest, false imprisonment, wrongful eviction, wrongful entry or other invasion of the right of private occupancy, wrongful detention and humiliation
- 1.1.3. assault and battery not committed by or at the direction of You unless committed for the purpose of preventing or eliminating danger to persons or property

#### 1.2. "Property Damage" means

- 1.2.1. loss of, physical damage to or destruction of tangible property including the loss of use thereof at any time resulting therefrom. All such loss of use shall be deemed to happen at the time of the physical damage that caused it
- 1.2.2. loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage or destruction of other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to first happen at the time of the physical damage that caused it

#### 1.3. "Pollution" means pollution or contamination of the atmosphere or of any water, land or other tangible property;

#### 1.4. "Product" means any property after it has left the custody or control of You which is or is deemed to have been designed, specified, formulated, manufactured, grown, extracted, produced, processed, treated, assembled, erected, constructed, installed, altered, serviced, repaired, sold, supplied or distributed by or on behalf of You (including any packaging or container thereof other than a Vehicle), but shall not include food or drink supplied by or on behalf of You primarily to the Your employees as a staff benefit.

#### 1.5. "Vehicle" means any type of machine designed to travel on wheels or on self-laid track (including any trailer or other attachment drawn by any such machine) made or intended to be propelled other than by manual or animal power.

#### 1.6. "Terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or governments(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

#### 1.7. "Occurrence" means an event, including continuous or repeated exposures to substantially the same general conditions, which result in Personal Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent upon or attributable to one source or original cause shall be deemed one Occurrence

### 2. CROSS LIABILITIES

Each person or party specified as You in the Schedule is separately indemnified in respect of claims made against any of them by any other, subject to our total liability not exceeding the stated Indemnity Limits.

### 3. INDEMNITY LIMITS

Our liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the Schedule against each Policy in respect of any one Occurrence or series of Occurrences arising from one originating cause, but under Section B and Section C of Policy One the Indemnity Limits represent Our total liability in respect of all Occurrences during the Period of Insurance.

Defence Costs will be payable in addition to the Indemnity Limits unless this Policy is endorsed to the contrary.

Should liability arising from the same originating cause form the subject of indemnity by more than one Policy each Policy shall be subject to its own Indemnity Limit, provided always that the total amount of Our liability shall not exceed the greatest Indemnity Limit available under any one of Policies providing indemnity.

## SECTION A – Public Liability

### 4. SECTION A – INDEMNITY

You are indemnified by this Section A in accordance with the Operative Clause for liability to pay damages for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limits detailed in the Schedule to the Policy but not against liability arising out of

- 4.1. Pollution;
- 4.2. or in connection with any Product.

### 5. SECTION A – EXCLUSIONS

This section does not cover liability

- 5.1. arising out of the ownership, possession or use of any Vehicle which is registered or which is required under any legislation to be registered or in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected), other than liability
  - 5.1.1. where such compulsory liability insurance or statutory indemnity does not provide indemnity and the reason for not providing indemnity does not involve a breach of legislation relating to a Vehicle
  - 5.1.2. for Property Damage caused by or arising from the operation or use of any tool or plant forming part of or attached to or used in connection with any Vehicle, or
  - 5.1.3. for Property Damage arising out of the loading or unloading of goods to or from any Vehicle, or
  - 5.1.4. for Property Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any Vehicle or load thereon, or
  - 5.1.5. for Property Damage arising out of any Vehicle temporarily in the Insured's custody or control for the purpose of parking, or
  - 5.1.6. for Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading or unloading, whilst being operated or used within the confines of the Insured's premises
- 5.2. arising out of the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways);
- 5.3. for Property Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than
  - 5.3.1. premises (or the contents thereof) temporarily occupied by the Insured for work therein (but no indemnity is granted for Property Damage to that part of the property on which the Insured is working and which arises out of such work);
  - 5.3.2. clothing and personal effects belonging to employees and visitors of the Insured;
  - 5.3.3. premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement.

### 6. EXTENSION TO SECTION A – ERRORS AND OMISSIONS COVERAGE

Subject to the terms, conditions and exclusions of Section A of Policy One, if We agree to provide Errors or Omissions Coverage and this is shown on the Policy Schedule, We will indemnify You for your liability to pay damages up to the amount of \$250,000 for all claims arising during the period of insurance in respect of personal injury or property damage solely and directly attributable to any negligent act, error or omission committed or alleged to have been committed by or behalf of you in your business operations during the period of insurance.

## **SECTION B – Pollution Liability**

### **7. SECTION B – INDEMNITY**

You are indemnified by this Section B in accordance with the Operative Clause for liability to pay damages for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance and arising out of Pollution within the Territorial Limits detailed in the Schedule to the Policy, but only to the extent that the Insured can demonstrate that such Pollution

7.1. was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance;

7.2. was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

### **8. SECTION B – EXCLUSIONS**

This Section is subject to the Exclusions of Sections A and C and also does not cover liability for and/or arising out of

8.1. Property Damage to premises presently or at any time previously owned leased or tenanted by You;

8.2. Property Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned leased or tenanted by You.

## **SECTION C – Products Liability**

### **9. SECTION C – INDEMNITY**

You are indemnified by this Section C in accordance with the Operative Clause for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limits detailed in the Schedule to the Policy but only against liability arising out of or in connection with any Product and not against liability arising out of Pollution.

### **10. SECTION C – EXCLUSIONS**

This Section does not cover liability:

- 10.1. arising out of Property Damage to any Product or part thereof;
- 10.2. for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or financial loss consequent upon the necessity for such repair, reconditioning, modification or replacement;
- 10.3. arising out of the recall of any Product or part thereof;
- 10.4. arising out of any Product or part thereof which with Your knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft.

## General Exclusions Applicable to All Sections of Policy One

11. This Policy does not cover liability:
- 11.1. in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or in respect of any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part)
  - 11.2. in respect of any Occurrence which You are, or would be but for the existence of this Policy, entitled to indemnity under any other policy of insurance;
  - 11.3. arising out of the deliberate, conscious or intentional disregard by Your technical or administrative management of the need to take all reasonable steps to prevent Personal Injury or Property Damage;
  - 11.4. for and/or arising out of Personal Injury imposed
    - 11.4.1. by any workers compensation law
    - 11.4.2. by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement
    - 11.4.3. for or in respect of any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by You provided that if You are
      - 11.4.3.a. required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such Personal Injury; or
      - 11.4.3.b. not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the Personal Injury is not an injury which is subject to such law
- then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the Insured complied with its obligations pursuant to such law;
- 11.5. in relation to any fines, penalties, aggravated, punitive or exemplary damages or other non-compensatory damages, including but not limited to multiplications of compensatory awards or damages
  - 11.6. based on or arising out of liquidated damages clauses, penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties;
  - 11.7. arising out of or as a consequence of advice given by You.
  - 11.8. for pure financial loss not consequent upon Personal Injury and/or Property Damage
  - 11.9. directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
  - 11.10. directly or indirectly caused by or contributed to by or arising from
    - 11.10.1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
    - 11.10.2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - 11.11. for the amount of the Excess stated in the Schedule which You must bear in respect of each Occurrence inclusive of Defence Costs
    - (if any product from one prepared or acquired batch causes Property Damage to property of or Personal Injury to more than one person, the Property Damage to property of all persons and all Personal Injury resulting from that batch shall be considered as arising out of one Occurrence
  - 11.12. directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part or arising from the existence of or exposure to asbestos and /or any asbestos containing materials
  - 11.13. for loss of use of tangible property which has not been physically damaged or destroyed resulting from
    - 11.13.1. a delay in or lack of performance by or on behalf of You in respect of any contract or agreement, or
    - 11.13.2. the failure of the Your Product to meet the level of performance, quality, fitness or durability warranted or represented by You, but this exclusion does not apply to loss of use of other tangible property resulting from physical damage to or destruction of tYour Product after such Product has been put to use by any person or organisation other than You.
  - 11.14. for Personal Injury and/or Property Damage directly or indirectly caused by, resulting from or in connection with any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This General Exclusion also excludes Personal Injury and/or Property Damage directly or indirectly caused by, resulting from or in connection

with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism

If We allege that by reason of this General Exclusion any Personal Injury and/or Property Damage is not covered by this Policy the burden of proving to the contrary shall be upon You.

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

11.15. directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part or arising from the existence of or exposure to mould, fungus/fungi, spore(s), mildew(s), mushroom(s), yeast(s), or biocontaminant(s) or any by-product therefrom

11.16. directly or indirectly arising out of sexual assault , sexual harassment, sexual molestation, rape or the consequences thereof

11.17. for loss, injury, damage or expense arising directly or indirectly out of the following activities;

- 11.17.1. Bungee Jumping;
- 11.17.2. Canyoneering and Caving;
- 11.17.3. Hang Gliding;
- 11.17.4. Heli-Hiking/Heli-Skiing/Heli Biking;
- 11.17.5. Horse riding and other related equine animal riding activities;
- 11.17.6. Hot air balloon rides;
- 11.17.7. Hunting;
- 11.17.8. Ice Climbing and Ice Fishing;
- 11.17.9. The use of Motorcycles and All Terrain Vehicles;
- 11.17.10. Mountain Biking;
- 11.17.11. Using your vehicle in a foreign country;
- 11.17.12. Parasailing;
- 11.17.13. Professional Sports;
- 11.17.14. Rock/Rope climbing;
- 11.17.15. Rappelling, Zip Line;
- 11.17.16. Scuba Diving;
- 11.17.17. Skiing and Snowboarding;
- 11.17.18. Buck and Hen Parties;
- 11.17.19. White Water Activities (Involving Class 3-5 Rapids ~~Water~~);
- 11.17.20. Working Holiday Stations, Farms and Lodges;
- 11.17.21. Any type of Racing;
- 11.17.22. Polo Playing;
- 11.17.23. Hang Gliding;
- 11.17.24. Trekking;
- 11.17.25. Helicopter Activities;
- 11.17.26. Water Skiing;
- 11.17.27. Snow Mobiles;
- 11.17.28. Rodeos;
- 11.17.29. Base Jumping;
- 11.17.30. Any form of Contact Sports;
- 11.17.31. Mountaineering;
- 11.17.32. Surfing;

11.17.33. Parachuting and Paragliding;

11.17.34. Cage Diving;

11.17.35. Mechanical Amusement rides; and

11.17.36. Motor Sports including but not limited to Motorcycles, Go-Karts, Quad Bikes and Speed Boats.

13.18 for personal injury to your contractor or subcontractor.

## Conditions Applicable To Policy One

### 1. Boat Hire Conditions

In connection with the hiring out of boats, canoes, kayaks or the undertaking of any other water based activity where the wearing of life jackets is mandatory in accordance with any statutory obligations, by-laws or regulations, this policy shall only provide indemnity if:

- (a) Lifesaving equipment and means of summoning emergency assistance are available at all times.
- (b) All boats, canoes, kayaks are inspected daily and any boats which are or become defective are removed from use until such defects are remedied.
- (c) Life jackets which comply with current Australian standards are available for use by hirers at no extra charge and all hirers are required to wear such jackets.
- (d) A motorised rescue boat in good working order will be available for at all times and in this connection coverage extends to indemnify the insured in respect of use of such rescue or safety boat provided that such boat is only used by the insured or their employees.
- (e) Any equipment required by law to be stored on the motorised boat or watercraft is in good operating condition.
- (f) the motorised boat or watercraft is less than 5 metres in length.

### 2. Communications Equipment Endorsement

It is a condition of cover that charged and fully operating communication equipment is carried by the tour operator or tour guide on the tour at all times.

### 3. First Aid Equipment

It is a condition of cover that a fully stocked first aid kit, along with a camera, is carried by any insured, tour guide or held on site at any insured tourist site at all times.

### 4. Cycling

In connection with the hiring out of a bike or cycling tours, it is a condition of cover that all participants wear bike helmets and it is the responsibility of the insured to ensure that such helmets are worn.

### 5. Hire Equipment – Minimum Age Requirement Of 18 Years

It is a condition of cover that all hirers of the insured's equipment are 18 years or over. It is the responsibility of the insured to ensure this is the case.

### 6. Hire Equipment – Maintenance And Service Of Equipment Clause

It is a condition of cover that equipment is maintained in a safe working condition, serviced in accordance with manufacturer's recommendations, is checked for wear and tear and where needed, remedial works are carried out prior to release on hire.

### 7. Animal Tourist Site

This policy does not cover liability in respect of Personal Injury or Property Damage arising directly or indirectly from or caused by or in connection with:

- (a) Any contact with animals including but not limited to the feeding of any "free roaming" animals by members of the public;
- (b) any animal enclosures which do not comply with any relevant statutory obligations, by-laws or regulations.



## Policy Two - Fines and Penalties Cover

### 1. Coverage

We will indemnify you for any loss arising from any claim first received by you and notified to us, during the period of insurance, up to, but not exceeding, the limit of liability within policy, is caused by an Occurrence in connection with the Business.

2. Definitions – in addition to the Definitions in the policy, the following words have special meaning within this Policy

#### 2.1 Act

Act means:

- a) any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts, and
- b) any amendment, consolidation or re-enactment of any of the above Acts or legislation.

#### 2.2 Appointed representative

Appointed representative means the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Policy t in respect of a claim.

#### 2.3 Claim

Claim means any originating legal process served on your pursuant to which you may be liable to a penalty.

#### 2.4 Consumer Protection Act

Consumer Protection Act means any consumer protection Act, including but not limited to any Fair Trading Acts, Part V of Trade Practices Act, and Competition and Consumer Act/s and any similar law of any state or territory and any amendment, consolidation or re-enactment of any of those Acts.

#### 2.5 Defence costs

Defence costs mean any reasonable legal costs and associated expenses incurred with the written consent of Us in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any **claim** but shall not include wages, salaries or other remuneration of you.

Provided that where proceedings are commenced to impose a penalty and those proceedings are also in respect of other matters, then We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

#### 2.6 Excess

Excess means the amount you are liable to pay in respect of each claim and in respect of this Policy Two that amount is AUD 2,500.

#### 2.7 Loss

Loss means any penalty and defence costs.

#### 2.8 Officer

Officer means any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the insured.

#### 2.9 Outside directorship

Outside directorship means an executive position held by an officer or senior officer of the insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the insured.

#### 2.10 Penalty

Penalty means any monetary sum payable by the insured to any regulatory authority pursuant to any act for a wrongful breach by the insured but excluding:

- a) any amounts payable as compensation;
- b) any compliance, remedial, reparation or restitution costs;
- c) any consequential economic loss;
- d) any damages, including any exemplary or punitive damages;
- e) any legal costs and associated expenses.

Notwithstanding penalty e) We will pay any reasonable legal costs and associated expenses payable by You to any regulatory authority upon the imposition of a penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the penalty

also include proceedings in respect of any of the matters set out in penalty a) to e), We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in penalty a) to e).

### **2.11 Reasonable grounds for defence**

Reasonable grounds for defence means:

- a) You have reasonable prospects of success in avoiding or reducing any penalty alleged in the claim; or
- b) You have reasonable prospects of success in reducing the quantum of any penalty alleged in the claim,

and that having regard to the likely legal costs incurred in defending the claim it is reasonable for the claim to be defended. Provided that in either scenario a) or b) above, the claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of You, properly advised would enter.

### **2.12 Regulatory authority**

Regulatory authority means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

### **2.13 Retroactive date**

Retroactive date means the policy inception date as specified on the schedule.

### **2.14 Senior officer**

Senior officer means any director, chief executive officer, or company secretary of You.

### **2.15 You/Your**

You/Your means each of the following, to the extent set forth below;

- (a) the named insured in the Schedule;
- (b) all subsidiary companies (present and future) of the named Insured whose places of incorporation are within Australia and New Zealand (including their Mandated Territories and Protectorates);
- (c) any director, executive officer, employee or partner of the named Insured or of a company designated in (b) but only whilst acting within the scope of their duties in such capacity;
- (d) any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Assured (other than an Assured designated in (d) in respect of claims arising from duties connected with activities of any such club or organisation.

### **2.16 Wrongful breach**

Wrongful breach means any act, error or omission which occurs:

- a) in connection with the business;
- b) within the territorial limits; and
- c) after the retroactive date,  
whereby:
  - i) You contravene an Act or are involved in the contravention of an Act; or
  - ii) You commit an offence pursuant to an Act; or
  - iii) such conduct is prohibited under an Act or is the subject of the imposition of a penalty under an Act.

## **3 Limit of liability**

The maximum We will pay in respect of any loss under this Policy during the period of insurance shall not exceed AUD \$100,000. You shall be personally liable for any amounts in excess of AUD \$100,000.

For the purposes of Policy, all losses arising out of any one wrongful breach or interrelated wrongful breaches are deemed to be one loss. The continuation of indemnity to you from one period of insurance to another shall not increase the limit of liability.

The limit of liability under this Policy is inclusive of defence costs.

#### 4 Exclusions

In addition to the exclusions in the policy we shall not provide indemnity to You in respect of:

- a) for any loss or any other amount resulting from or in arising out of:
  - (i) the cost incurred by the insured in complying with any enforcement or remedial order; or
  - (ii) the cost or payment of any fine (or part of a fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order or compliance order.
- b) any claim based upon, attributable to or in consequence of
  - (i) any wilful, intentional or deliberate wrongful breach; or
  - (ii) a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
  - (iii) any wrongful breach caused by gross negligence or recklessness by You; or
  - (iv) You gaining any personal profit or advantage or receiving any remuneration to which you were not legally entitled; or
  - (v) any wrongful breach in connection with any strike, lockout, picket line stand down or industrial dispute. This exclusion does not apply to officers and employees for claims arising in the performance of their duties as officers and employees; or
  - (vi) a wrongful breach of any consumer protection act. This exclusion does not apply to officers and employees for claim arising in the performance of their duties as officers and employees; or
  - (vii) any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Australian Corporations Law; and any amendment, consolidation or re-enactment of any of those sections; or
  - (viii) a wrongful breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
  - (ix) a wrongful breach relating to the regulation of vehicular, air or marine traffic.
- c) any claim made, threatened or in any way intimated against You prior to the period of insurance;
- d) any claim arising from any matter disclosed to any insurer including Us prior to the period of insurance as either a claim or circumstance which may give rise to a claim against You;
- e) any claim arising from any circumstances of which You had become aware prior to the period of insurance and which You knew (or ought reasonably to have known) to be circumstances which may give rise to a claim;
- f) any claim arising from any wrongful breach where You knew (or ought reasonably to have known) prior to the period of insurance that there had been such a wrongful breach;
- g) any claim arising from an outside directorship;
- h) for any loss or part of any loss which is attributable to the period after You knew (or ought reasonably to have known) that the Your conduct was a wrongful breach;
- i) any claim deliberately or intentionally solicited by You. This exclusion does not apply to officers and employees where such claims arise in the discharge of their duties as officers and employees;
- j) any defence costs incurred or paid before Our consent has been given in accordance with the provisions of this Policy;
- k) for any loss or part of any loss arising from or which is attributable to the Your participation in any joint venture;
- l) for any penalty
  - (i) imposed pursuant to any law of any country, state or territory outside of Australia; or
  - (ii) imposed within Australia but arising out of any act or omission occurring outside Australia, and any defence costs associated with such penalty.
- m) We shall not be liable to pay the amount of the excess in respect of each loss;
- n) Any claim resulting from or arising out of any investigation of, and defence of, any action, proceeding, inquiry, investigation or prosecution taken against the insured by a person other than the regulatory authority given that responsibility under the Act;
- o) Resulting from or arising out of any claim in connection with:
  - (i) the cost or payment of any enforcement order, remedial order or compliance order; or
  - (ii) any fine imposed in relation to a daily continuing wrongful breach or conduct where the fine is imposed in relation to a period of time after the insured first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that wrongful breach or conduct.

## 5. Special Conditions

We shall not be liable to indemnify You for defence costs under this Policy unless You obtain the Our written consent.

We shall not be obliged to provide such consent unless satisfied that You have reasonable grounds for defence.

If You refuse to provide the consent We shall give You reasons for refusal.

If after receipt of those reasons You contest the refusal to provide such consent. You may obtain the written opinion of a senior counsel. The senior counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant state or territory. If the senior counsel is of the opinion that You have reasonable grounds of defence then We will:

- a) give consent; and
- b) be responsible for the senior counsel's reasonable fees for providing such opinion.

If You continue to defend a claim where You have refused to provide consent and You are successful in respect of that claim, then the original consent shall be deemed to have been given at the time it was first requested by You. For the purpose of this clause "successful" means that the outcome of the claim establishes that at the time at which You refused consent, You had reasonable grounds for defence.

## 6. General Conditions

### Notices under an Act

You shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate regulatory authority under any Act within the time specified or if no time is specified, within a reasonable time.

## Policy Three – Supplementary Legal Expenses Insurance Cover

**Where** We have received a written proposal and other documents, which shall be the basis of this contract and which are incorporated in and form part of this contract;

In consideration of payment of the premium and subject to the Policy Schedule, limitations, conditions, provisions and other terms of this Policy, We hereby agrees to the extent and in the manner herein provided to pay to or on behalf of You and/or the Named Organisation all Loss (as defined), provided that our total liability shall not exceed the Limit(s) of Indemnity stated in the Policy Schedule in relation to Policy 3.

### 1. INSURING CLAUSE

Provided that the Event which has given rise to the Claim under this Policy occurred after the Retroactive Date, We agree subject to the terms, conditions and limitations of this Policy, to pay the Loss incurred on behalf of;

- 1.1 You and/or the named organisation on account of any Claim first made against them during the Period of Insurance and which is notified to Us during that Period by reason of;
  - 1.1.1 Your and/or the Named Organisation's attendance at any prosecution, inquiry (criminal or otherwise) , investigation, examination or other proceedings before a Court or Tribunal at the direction of that Court or Tribunal, or
  - 1.1.2 Your and/or the Named Organisation's attendance at any prosecution, inquiry (criminal or otherwise), investigation, examination or other proceedings before a Court or Regulatory Authority or Tribunal at the direction of that Court or Regulatory Authority or Tribunal.
- 1.2 You and/or the Named Organisation on account of any Claim first made against it during the Period of Insurance and which is notified to Us during that Period in relation to any Employment Dispute committed, attempted or allegedly committed or attempted by the Named Organisation.

### 2. OUR CONSENT TO INDEMNITY

- 2.1 We shall not be liable to indemnify You and/or the Named Organisation under this Policy unless You and/or the Named Organisation have obtained the our specific consent which We are only obliged to give if You and/or the Named Organisation have Reasonable Grounds for defending any Claim made or instituted against You and/or the Named Organisation, or there are Reasonable Grounds for the Successful Outcome of any matter.  
In considering any request for indemnity We will have regard to the opinion of the Appointed Representative as well as that of their own advisers particularly with regard to the prospects of success of the Claim.
- 2.2 If We refuse to grant a request for the provision of indemnity, We shall give You and/or the Named Organisation detailed reasons for our refusal. We shall also give You and/or the Named Organisation access to Our advisers so that representations can be made to them. If We still refuse to consent, You and/or the Named Organisation may obtain the opinion of a Senior Counsel (acceptable to both parties or failing agreement, to be appointed by the President of the Law Society or Law Institute within the relevant State or Territory). We shall give our consent if that Senior Counsel is of the opinion that You and/or the named Organisation have reasonable Grounds for defending any Claim made or instituted against You and/or the Named Organisation, or that there are Reasonable Grounds for the successful outcome of the matter. (In this event, We will be responsible for the Senior Counsel's fees).
- 2.3 If You and/or the Named Organisation continues with the Claim that is the subject of the unsuccessful request for indemnity and You and/or the Named Organisation is successful in respect of such Claim, the indemnity provided by the Policy shall be deemed to have been extended as if We had given their specific consent in the first instance. For the purpose of this clause "successful" means that the outcome of the Claim establishes that at the time at which We refused consent You and/or the Named Organisation had Reasonable Grounds for defending the Claim.

### 3. LIMIT OF OUR LIABILITY

- 3.1 For the purposes of this Policy, all Loss arising out of all interrelated prosecutions or inquiries shall be deemed one Loss and such Loss shall be deemed to have originated on the earliest date at which a Claim(s) is made against You and/or the Named Organisation.
- 3.2 Our maximum limit in respect of any one Loss shall be limited to the amount specified in the Policy Schedule.  
The total cumulative limit of Our liability in respect of all Loss(es) in respect of the same Period of Insurance shall not exceed the amount specified in the Policy Schedule.

### 4. EXCESS AND CO-INSURANCE

You and/or the Named Organisation, each for their own account, shall bear the Excess stated in the Policy Schedule and then thereafter the co-insurance percentage as set out below of all the Loss (less the first Excess) :-

You	five percent (5%)
Named Organisation	ten percent (10%)

### 5. EXCLUSIONS

- 5.1 We shall not be liable to make any payment hereunder in respect of:
  - 5.1.1 any Claim made, commenced or brought outside the territorial/jurisdictional limits;

- 5.1.2 any criminal prosecution that has been deliberately or intentionally solicited by You and/or the Named Organisation;
- 5.1.3 any Loss incurred or paid before Our consent had been given in accordance with the provisions of this Policy;
- 5.1.4 any event occurring prior to or existing at the inception of this Policy and which You and/or the Named Organisation knew or ought reasonably to have known, was likely to give rise to a Claim being brought against You and/or the Named Organisation;
- 5.1.5 any Claim or circumstances likely to give rise to a Claim known to You and/or the Named Organisation prior to or existing at the inception of this Policy;
- 5.1.6 any Claim or circumstances likely to give rise to a Claim stated in the proposal being the basis of this contract.
- 5.1.7 any Claim directly or indirectly caused by or contributed to, by, or arising from:
- 5.1.7.1 ionising, radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - 5.1.7.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - 5.1.7.3 war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority.
- 5.1.8 any Claim directly or indirectly based upon or attributable to You and/or the Named Organisation gaining any personal profit or advantage or receiving any remuneration to which You and/or the Named Organisation were not legally entitled;
- 5.1.9 any Claim arising out of Your and/or the Named Organisation's dishonesty.
- However this Exclusion 5.1.9 shall only apply where the subject conduct has been established by a judgement or other final adjudication adverse to You and/or the Named Organisation.
- 5.1.10 any Claim made against you and/or the Named Organisation arising out of or in connection with any strike, lock out or industrial dispute.
- 5.1.11 any Claim made against You and/or the Named Organisation under the *Competition and Consumer Act* or the *Fair Trading Act* of any State or Territory of Australia or the *Australian Taxation System (Goods and Services Tax) Act 1999*;
- 5.1.12 any Loss arising out of a commercial or contractual dispute;
- 5.1.13 your and/or the Named Organisation's defence in respect of any matter which is subject to coverage by Directors and Officers Liability Policy in Your and/or the Named Organisation's name;
- 5.1.14 any Claim which has been the subject of payment under a Directors & Officers Liability Policy in Your and/or the Named Organisation's name for which the indemnity limit or sum insured for that policy has been exhausted;
- 5.1.15 any excess or deductible payable by You and/or the Named Organisation under any policy of insurance;
- 5.2 With respect to Exclusions 5.1.4 and 5.1.6 no fact pertaining to or knowledge possessed by You and/or the Named Organisation shall be imputed to any other Insured for the purpose of determining the availability of coverage for or with respect to Claim(s) made against such other Named Organisation.
- 5.3 We shall not be liable to pay damages, compensation (other than Fees and Expenses), fines, penalties imposed by law, civil penalties, liability for group or sales tax, punitive or exemplary damages.
- 5.4 Any claim made against You and/or the Named Organisation arising from or attributed to Your and/or the Named Organisation's participation in any Joint Venture.
- 5.5 Any claim made against You and/or the Named Organisation arising out of injury, disease or death of any of Your and/or the Named Organisation's employees or of any person who is deemed under any applicable law to be an employee of Yours and/or the Named Organisation's.
- Provided that this exclusion does not apply to any Claim which may be brought by reason of an Employment Dispute nor to any prosecution, inquiry, investigation, examination or proceeding as stated in Insuring Clauses 1.1.1 and 1.1.2 to Policy 3.
- 5.6 The dismissal of any employee within thirty (30) days after the commencement of employment of such employee with You and/or the Named Organisation or the termination of any employment by any employee within thirty (30) days after the commencement of employment of such employee with You and/or the Named Organisation where the employee alleges that the reason for termination was or included Your conduct or that of the Named Organisation.

## 6. DEFINITIONS

### 6.1 "You/Your"

You/Your means all past, present and future Directors, Executive Officers (as defined in the Corporations Law), the Company Secretary and all other employees of the Named Organisation.

## 6.2 "Named Organisation"

Named Organisation means the organisation designated in the Policy Schedule and/or subsidiary company(ies) thereof (as defined) existing prior to or at the inception of this Policy.

## 6.3 "Subsidiary Company"

Subsidiary Company means any organisation that is controlled by the Named Organisation through ownership or control of more than 50% of the issued voting shares, but such term shall include any organisation whose financial accounts are incorporated in those of the Named Organisation by virtue of accounting standards AASB 1024 or any equivalent standard.

## 6.4 "Claim"

Claim shall mean any notice by which a Court or Regulatory Authority or Tribunal directs any of the parties insured by this Policy to appear before that Court or Regulatory Authority or Tribunal.

## 6.5 "Appointed Representative"

Appointed Representative means the Solicitors, Assessors, Consultants or Investigators instructed to act for You and/or the Named Organisation in accordance with the terms of this Policy.

## 6.6 "Fees and Expenses"

Fees and Expenses means:

- 6.6.1 any legal fees, expenses and other disbursements reasonably charged to You and/or the Named Organisation by an Appointed Representative in connection with any Claim made against You and/or the Named Organisation including costs and expenses of expert witnesses as well as those incurred by Us in connection with any such Claim;
- 6.6.2 any costs incurred by other parties insofar as You and/or the Named Organisation is held liable to pay such costs by reason of an order of any arbitrator, court, tribunal, board, professional or official body, institution or otherwise becomes liable to pay the costs under a settlement made with the other party;
- 6.6.3 any fees, expenses or other disbursements reasonable incurred in appealing or resisting an appeal against the judgement of a relevant arbitrator, court, tribunal, board, professional or official body or institution as the case may be.

## 6.7 "Period of Insurance"

Period of Insurance means the period specified on the Policy Schedule/Certificate of Insurance.

## 6.8 "Reasonable Grounds for Defending any Claim" and Reasonable Grounds for the Successful Outcome"

Reasonable grounds for Defending any Claim, and Reasonable Grounds for the Successful Outcome means:

- 6.8.1 You and/or the Named Organisation have reasonable prospects of success in avoiding or reducing any liability alleged in the Claim made or brought against You; or
- 6.8.2 You and/or the Named Organisation have reasonable prospects of success in reducing the quantum of the Claim made or brought against You and/or the named Organisation and that having regard to the likely legal costs thereof it is reasonable for the Claim to be defended. Provided in either event that the Claim is not capable of being avoided or terminated by a settlement into which a reasonable person in Your and/or the Named Organisation's position, properly advised, would enter.

## 6.9 "Territorial Limits"

Territorial Limits means anywhere in Australia.

## 6.10 "Retroactive Date"

Retroactive Date means the inception date of the policy .

## 6.11 "Loss"

Loss shall mean the total amount of Fees and Expenses on account of each Claim. Loss does not include damages, compensation (other than Fees and Expenses), fines, penalties imposed by law, civil penalties, liability for group or sales tax, punitive or exemplary damages or matters uninsurable under law pursuant to which this Policy is construed.

## 6.12 "Event"

Event is anything unintentionally done or omitted to be done by You and/or the Named Organisation which exposes You and/or the Named Organisation to prosecution, inquiry (criminal or otherwise), investigation, examination or other proceedings before a Court or Tribunal.

Where there is more than one Event, the Event is the one which occurred first.

## 6.13 "Tribunal"

Tribunal includes any board, professional or official body or institution of any of the parties insured by this Policy.

## 6.14 "Joint Venture"

Joint Venture shall mean any enterprise undertaken jointly by You and/or the Named Organisation and another party or parties.

#### 6.15 "Regulatory Authority"

Regulatory Authority means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act.

#### 6.16 "Terrorism"

Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) 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.

#### 6.17 "Employment Dispute"

Employment Dispute means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment, or discrimination in respect of Directors, Executive Officers, the Company Secretary and all other employees (be they past, present or prospective) of You and/or the Named Organisation. All such causally connected wrongful acts shall be deemed interrelated Employment Disputes.

### 7. EXTENSIONS

Subject otherwise to the terms and conditions of this Policy:

#### 7.1 Estate, heirs legal representatives or assigns

We shall indemnify the estate, heirs, legal representatives or assigns of any deceased, incompetents or insolvents of Yours and/or the Named Organisation's.

#### 7.2 Acquired Companies

Provided that notice is given to Us as soon as practicable, it is understood and agreed that the definition of You and/or the Named Organisation extends to include any subsidiary company acquired subsequent to the inception of this Policy, but the indemnity granted by virtue of this extension shall only apply in respect of an Event subsequent to the acquisition or a prosecution or inquiry brought or commenced subsequent to this acquisition;

We shall be entitled to such additional information as it may require in respect of such acquired or created subsidiary company and shall have the right to charge an additional premium.

#### 7.3 Preservation of Indemnity

If You and/or the Named Organisation are unable to satisfy a right to indemnity against You and/or the Named Organisation to which You are entitled, whether at Common Law or Statute, or otherwise, by reason only of You and/or the Named Organisation being placed in liquidation (other than voluntary liquidation) and having insufficient funds available so to indemnify You and/or the Named Organisation, then it is hereby agreed that We shall indemnify You and/or the Named Organisation against Fees and Expenses arising from any Claim.

#### 7.4 Continuous Cover

7.4.1 In the absence of fraudulent non-disclosure and subject to clause 7.4.1.1 and 7.4.1.2 below, where:

- 7.4.1.1 a Claim is made against You and/or the Named Organisation by reason of an act, error or omission of Yours and/or the Named Organisation's which occurred prior to the Period of Insurance Stated in the Policy Schedule; and
- 7.4.1.2 We, Yours and/or the Named Organisation's Legal Expenses insurer at the time when You and/or the Named Organisation first became aware of the circumstance which subsequently gave rise to a Claim ("Circumstances"); and
- 7.4.1.3 We continued without interruption as Your and/or the Named Organisation's Legal Expenses insurer from the time when You and/or the Named Organisation first became aware of the Circumstances up until such time as the Claim is made against You and/or the Named Organisation and notified Us;

We agree to indemnify You and/or the Named Organisation against the Claim subject to and on the terms and conditions of this Policy.

7.4.2 We reserve the right to reduce our liability in respect of the Claim by the amount which fairly represents the extent to which Our interests are prejudiced as a result of the late notification.

7.4.3 Where clauses 7.4.1.1 and 7.4.1.2 above apply, We agree that We will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of You and/or the Named Organisation with respect to the Claim.

### 8. CONDITIONS

(To be read in conjunction with "OUR CONSENT TO INDEMNITY")

#### 8.1 Precautionary Measures to Prevent Claims

You and/or the Named Organisation must take all reasonable precautionary measures to avoid or lessen the chance of any Claim being made. You and/or the Named Organisation shall not pursue a course of action which they know or ought reasonably to know will bring about any Claim.

#### 8.2 Notification of Circumstances



If, during the Period of Insurance, You and/or the Named Organisation become aware of any circumstances that may give rise to a Claim and during the Period of Insurance give notice in writing to Us of such circumstances, then any Claim which may subsequently arise out of such circumstances shall be construed to be a claim made during the Period of Insurance.

### 8.3 Claims and conduct of Legal Proceedings

#### 8.3.1 Notification of Claim

You and/or the Named Organisation must be give written notice (by posted letter or facsimile transmission) as soon as practicable to:

ASR UNDERWRITING AGENCIES PTY LTD  
PO Box 302 Beenleigh Qld 4207  
Ph 07 34423333 Fax 07 38076839

after becoming aware of circumstances which might give rise to a Claim.

#### 8.3.2 Nomination of Solicitor to Act

If You and/or the Named Organisation wishes to nominate their own solicitor to act for You and/or the Named Organisation in connection with any claim, they must submit the name and address of the solicitor to Us, You and/or the Named Organisation has freedom of choice in nominating any Appointed Representative and may request Us to nominate an Appointed Representative to act on Your and/or the Named Organisation's behalf.

However, in any event, Our maximum liability for any legal fees charged by the Appointed Representative shall be restricted to \$395 per hour or the Appointed Representative's usual charge-out hourly rate, whichever is the lesser.

We may accept or refuse any nomination of any person or firm to act as Appointed Representative without giving any reason. If thereafter agreement cannot be reached on the appointment, the President of the Law Society or Law Institute within the relevant State or Territory shall be requested to nominate an Appointed Representative. During this period We shall be entitled, but not bound, to instruct an Appointed Representative on Your and/or the Named Organisation's behalf if We consider it necessary to do so to safeguard Your and/or the Named Organisation's immediate interests.

#### 8.3.3 All information and assistance to be given to Appointed Representative

You and/or the Named Organisation shall at all times and at Your and/or the Named Insured's expense give to the Appointed representative all such information and assistance as reasonably required. You and/or the Named Organisation shall give a complete and truthful account of the facts of the case, shall supply all documentary or other evidence in their possession relating to the Claim, shall obtain and sign all documents reasonably required to be obtained and signed and shall attend any meetings or conferences when reasonably requested.

#### 8.3.4 Our access to Appointed Representative

You and/or the Named Organisation shall do all things reasonably necessary to allow Us to obtain from the Appointed Representative, any information, report, documents or advice relating to the Claim. However, You and/or the Named Organisation shall not be prejudiced if the Appointed Representative refuses to make such information, report, documents or advice available to Us on the grounds that to do so might prejudice Your and/or the Named Organisation's interests in any litigation that is involved or may be commenced.

#### 8.3.5 Offer to settle by other party

You and/or the Named Organisation must inform Us as soon as practicable after You and/or the Named Organisation receive any offer to settle the Claim. No agreement to settle which may result in a claim for indemnity under this Policy may be made without Our prior approval which will not be unreasonably withheld. We, where You and/or the Named Organisation unreasonably withheld their agreement to any settlement, reserves the right to decline further indemnity from the date when such agreement is unreasonably withheld.

#### 8.3.6 Appointed Representatives bills to be sent to Us without delay

You and/or the Named Organisation must forward to Us all bills of costs or other communications relating to Loss as soon as practicable after receipt by You and/or the Named Organisation. If requested by Us, You and/or the Named Organisation shall instruct the Appointed Representative to submit the bills of costs for taxation or adjudication by any relevant professional body, court or other tribunal.

#### 8.3.7 Recovery of costs from other party

Where You and/or the Named Organisation is awarded costs, You and/or the Named Organisation must provide all co-operation reasonably required by Us to recover the Loss which would be the subject of indemnity under this Policy. All such Loss actually recovered shall be taken into account where We are calculating our liability under this Policy. If the Loss has already been paid by Us, the amount recovered shall forthwith be paid by You and/or the Named Organisation to Us.

#### 8.3.8 We are to approve level of fees of Appointed Representative

You and/or the Named Organisation must not, without Our prior written approval, enter into any agreement with the Appointed Representative as to the level of fees and expenses to be charged. You and/or the Named Organisation must not represent to any Appointed Representative that all fees and expenses charged to their account are covered by this Policy.

#### 8.3.9 Notice to Us of other insurance

In the event of any claim for indemnity under this Policy, You and/or the Named Organisation must notify Us of all other insurance effected by You and/or the Named Organisation providing the same or similar cover.

### 8.3.10 Subrogation

If any payment is made under this Policy, We shall be subrogated to the extent of such payment to You and/or the Named Organisation's rights of recovery. In such case You and/or the Named Organisation shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable We effectively to bring suit in the name of You and/or the Named Organisation.

### 8.4 Appeal Procedure

If You and/or the Named Organisation is dissatisfied with any decision made by a court or tribunal and wish to appeal against that decision, they must make a further application for Our consent at least six (6) clear business days prior to the expiry of the time for instituting an appeal. Such application shall be in writing and shall state the reasons as fully as possible for making an appeal. In the event that the time allowed by law to file an appeal is less than six (6) business days, You and/or the Named Organisation shall advise Us as soon as practicable that You wish to appeal and provide Your and/or the Named Organisation's reasons for making the appeal. We shall inform You and/or the Named Organisation in writing as to whether they consent to the bringing of an appeal.

If We are dissatisfied with any decision made by a Court or Tribunal and wishes to appeal against that decision, You and/or the Named Organisation shall reasonably co-operate with Us in the bringing of such an appeal. In this event We shall pay all costs involved.

### 8.5 Recovery

In the event Exclusion 5.1.6 applies, We shall have the right to recover from You and/or the Named Organisation all Loss which may have been paid by Us.

### 8.6 Cancellation

8.6.1 We may cancel this Policy at any time by giving You and/or the Named Organisation notice in writing for any circumstances as set out in the *Insurance Contracts Act (1984)*.

8.6.2 This Policy may be cancelled at any time at the written request of You and/or the Named Organisation by giving written notice to Us.

If Policy 3 is cancelled either by you and/or the named Organisation or Us. We will not refund any Premium for the unexpired portion and you have no right to, part or all of the Premium.

### 8.7 Breach

If You and/or the Named Organisation is in breach of any of the terms or conditions of this Policy, We shall be entitled to enforce its rights in accordance with the provisions of the *Insurance Contracts Act (1984)* other than as provided under the imputation clause applicable to Exclusions 5.1.2, 5.1.4, 5.1.6 and 5.1.8 of this Policy.

### 8.8 Representation and Severability

In granting coverage under this Policy to You and/or the Named Organisation We have relied upon the declarations, statements and attachments to the written proposal for coverage. All such declarations, statements and attachments are the basis of such coverage and shall be considered as incorporated in and constituting part of the Policy.

The written proposal for coverage shall be construed to be a separate application for You and/or the Named Organisation. With respect to the declarations and statements contained in such written proposal for coverage no statement in the proposal or knowledge possessed by You and/or the Named Organisation shall be imputed to You and/or the Named Organisation for the purpose of determining the availability of coverage with respect to Claim(s) made against You and/or the Named Organisation.

### 8.9 Jurisdiction

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of Australia, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

### 8.10 Confidentiality

It shall be a condition of this Policy that You and/or the Named Organisation do not release to any third party or otherwise publish details of the nature of the liabilities insured by this Policy without the written consent of Us, such written consent not to be unreasonably withheld.

## 9. Claims Conditions

### a) Notification of claims/circumstances

You shall, as a condition precedent to their right to be indemnified under this Policy, give immediate notice in writing;

- a) of any claim made against You; and
- b) of any circumstances which You shall become aware which may give rise to a claim under this Policy; irrespective of whether the penalty is likely to be within or above the amount of the excess

If a claim is made against You during the period of insurance and You notify Us of such claim within 14 days after expiry of the period of insurance, such claim shall be deemed to have been notified to Us during the period of insurance.

If during the period of insurance You becomes aware of any circumstances which may subsequently give rise to a claim against You and You give written notice of such circumstances to Us during the period of insurance (or within 14 days after the expiry of the period of insurance, then any claim which may subsequently be made against You shall be deemed to be a claim made against You and notified to Us during the period of insurance.

b) Settlement / defence / co-operation

You shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a wrongful breach or diminish a loss.

You shall not make any offer, payment, admission, settlement or effect any resolution in respect of any claim or agree to pay any penalty or consent to any order directing You to pay any penalty without our consent. We shall not be liable for any such penalty incurred without our consent. We shall, however, not unreasonably withhold such consent.

We shall have the right, but not the obligation, to conduct in the name of You, the investigation, defence (including appeal and resisting appeal) and settlement of any claim. Any amount incurred by Us shall be deemed to be part of the defence costs.

Where We recommend to You to agree to pay any penalty, consent to any order directing You to pay any penalty or otherwise settle or resolve any claim, and You do not agree to do so, then We are entitled to reduce our liability to You to the extent of any prejudice suffered by reason of Your failure to so agree.

You may request Us to nominate the appointed representative to act on your behalf. Alternatively, if You wish to nominate the appointed representative You must obtain consent to the appointment of the appointed representative, which consent shall not be unreasonably withheld. If the parties cannot agree on the appointment of the appointed representative then the parties may agree to refer this issue to the then President of the Law Society or Law Institute within the relevant State or Territory to appoint the appointed representative.

You shall not enter into any agreement to appoint the appointed representative without first obtaining Our consent as to the terms of the appointment of the appointed representative, including remuneration terms.

Further, You shall not represent to the appointed representative that all costs and associated expenses are covered by this Policy.

You shall do all things reasonably necessary to allow Us to obtain from the appointed representative any information, report, documents or advice relating to the claim.

You shall, upon Our request or the appointed representatives' request, and at its own expense:

- a) provide all information and assistance as may be required;
- b) give a complete and truthful account of the facts relevant to any claim;
- c) supply all documents and other evidence relevant to the claim; and
- d) obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,

And, in respect of a claim made against:

- a) You, shall, upon Our request or the appointed representative and at its own expense, ensure that a senior officer attends and if necessary gives evidence, on behalf of You at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against You;
- b) any officer or employee, the officer or employee shall, upon Our request or the appointed representative and at their own expense attend, and if necessary given evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against such officer or employee.

For the purpose of (b) Settlement/Defence/Co-operation any reference to a claim includes circumstances notified under clause (a) Notifications of claims/circumstances



ASR Underwriting Agencies Pty Ltd  
ABN 84 113 542 233  
AFSL 291522  
25 Main St Beenleigh Qld 4207  
PO Box 491 Beenleigh Qld 4207  
Ph 07 344 23333 | Fax 07 38076839  
Email [enquiries@asruw.com.au](mailto:enquiries@asruw.com.au)  
Website [www.asruw.com.au](http://www.asruw.com.au)



Coverholder at **LLOYD'S**