



**Solution Underwriting Information Technology
Liability Package**

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Information Technology Liability Package

Part 1 : Civil Liability Professional Indemnity Policy

In consideration of payment of the premium and in relying upon the **Proposal**, the **Insurer** agrees to indemnify the **Insured** in accordance with the terms of this **Policy**.

INSURING CLAUSES

The **Insurer** agrees to indemnify the **Insured** for **civil liability** covered by this **Policy** in relation to any **Claim** indemnified by the following covers if the **Claim** is first made against the **Insured** and also reported to the **Insurer** during the **Period of Insurance**.

If a **Retroactive Date** is specified in the **Schedule**, indemnity is only available in respect of acts, errors or omissions committed after the **Retroactive Date**.

Breach of Professional Duty Cover

The **Insurer** will pay for breach of professional duty in the conduct of the **Information Technology Services**, including breach of a duty of confidentiality.

Libel and Slander Cover

The **Insurer** will pay for unintentional libel, unintentional slander or unintentional defamation by the **Insured** in the conduct of the **Information Technology Services**.

Intellectual Property Cover

The **Insurer** will pay for infringement of rights of intellectual property, provided that the act, error or omission by the **Insured** is unintentional and is committed in the conduct of the **Information Technology Services**.

Trade Practices Act Cover

The **Insurer** will pay for conduct of the **Information Technology Services** which is in breach of the Trade Practices Act 1974 (Commonwealth) or corresponding provisions in Commonwealth of Australia and Australian State or Territory fair trading legislation, but not for intentional acts or criminal liability.

LIMIT OF INDEMNITY AND DEFENCE COSTS

Limit of Indemnity

The total liability of the **Insurer** under this **Policy** in respect of any one **Claim**, and in the aggregate for all **Claims**, (including any amounts paid or which have been agreed will be paid in accordance with Claims Condition - Discharge of Liability) will not exceed the **Limit of Indemnity**.

If a limit is shown in the **Schedule** for a particular Cover or Extension then the total liability of the **Insurer** under that Cover or Extension is as stated inclusive of **Defence Costs** and the limit is part of and not in addition to the **Limit of Indemnity**. The Extension – Automatic Reinstatement will not apply to any Covers or Extensions if the limit is less than the **Limit of Indemnity**.

Defence Costs

The **Insurer** will pay **Defence Costs** incurred with the written consent of the **Insurer** in the investigation, defence and/or settlement of any **Claim** for which the **Insured** is entitled to indemnity.

Additional Costs

The **Insurer** will indemnify the **Insured** for **Defence Costs** in addition to the **Limit of Indemnity** for up to:

- i. \$5,000,000; or
 - ii. the **Limit of Indemnity**;
- whichever is lesser.

If a judgment or an amount required to settle a **Claim** exceeds the **Limit of Indemnity**, our liability to pay **Defence Costs** is limited to the proportion the **Limit of Indemnity** bears to the amount required to be paid to dispose of the claim and in all cases will not exceed an amount equivalent to the Additional Costs described in the paragraph above.

EXTENSIONS

The **Insurer** agrees to provide cover under these Extensions for no additional premium provided that:

- a) all terms and conditions of this **Policy** apply; and
- b) the inclusion of any Extension does not increase the **Limit of Indemnity**.

Automatic Reinstatement

If the **Limit of Indemnity** set out in the **Schedule** is exhausted or partially exhausted by indemnity provided to the **Insured** in respect of **Claim/s**, the **Insurer** agrees to reinstate the **Limit of Indemnity** by the amount by which it is exhausted provided that:

- a) the reinstatement will not apply to **Claims** made prior to the effective date of the reinstatement; and
- b) the aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to the **Limit of Indemnity** applicable at the start of the **Period of Insurance**; and
- c) the **Limit of Indemnity** reinstated will represent the total liability of the **Insurer** for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**; and
- d) if the **Insured Person** has insurance that operates in excess of this **Policy**, no reinstatement will apply until the amounts payable under that insurance are exhausted.

If the **Limit of Indemnity** is reinstated on one (1) occasion in accordance with this Extension, the **Insurer** agrees to reinstate the **Limit of Indemnity** on one (1) further occasion in accordance with the terms of this section during the **Period of Insurance** if required.

Consultants, Sub Contractors and Agents

The **Insurer** agrees to provide cover for any **civil liability** arising from, attributable to or reasonably incidental to the provision of **Information Technology Services** by any consultants, sub contractors or agents of the **Insured**.

No indemnity is provided to the consultants, sub contractors or agents for any **Claim** made against such consultants, sub contractors or agents.

Continuous Cover

If the **Insured**:

- a) first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- b) had not notified the **Insurer** of these facts or circumstances prior to the **Period of Insurance**, then the Exclusion - Prior Circumstances and Claims will not apply to any notification during the **Period of Insurance** of any **Claim** later resulting from such facts or circumstances, provided that:

- i. there has been no fraudulent non-compliance with the **Insured's** duty of disclosure and no fraudulent misrepresentation by the **Insured** in respect of these facts or circumstances; and
- ii. the **Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a Professional Indemnity insurance policy issued by the **Insurer** which would have provided cover for that **Claim** and was insured by the **Insurer** at the time when the **Insured** first became aware of the facts or circumstances giving rise to the **Claim**; and
- iii. the **Insurer** can reduce its liability under the **Policy** to the extent of any prejudice it may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**; and
- iv. this extension does not apply to any indemnity provided by the Extension - Automatic Reinstatement.

Dishonesty

The **Insurer** agrees to provide cover for any **Claim** arising from or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission of any **Employee** or **Principal** in the conduct of the **Business**, provided that no cover is available under this Extension:

- a) for any person committing or condoning the act, error or omission; or
- b) for any loss sustained or liability incurred as a result of any act, error or omission occurring after the date on which the **Insured** first discovers, or has reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any **Employee** or **Principal**.

The Exclusion - Dishonesty & Conflict will not apply to any **Claim** covered by this Extension.

Estates

The **Insurer** agrees to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent **Insured**.

Former Principals and Employees

The **Insurer** agrees to indemnify former **Principals** and **Employee(s)** of the **Insured** in respect of **civil liability** covered by the Insuring Clauses provided for work performed while acting as a **Principal** or **Employee** of the **Insured**.

Incoming Principals

The **Insurer** agrees to indemnify a **Principal** of the **Insured** for **civil liability** arising while they were acting in their capacity of **Principal** in the conduct of a business which practises the same type of **Information Technology Services** as the **Business** and was disclosed in the **Proposal**.

Inquiry Representation Expenses

The **Insurer** agrees to pay the **Insured** for **Inquiry Representation Expenses** provided that:

- a) the notice requiring the **Insured's** attendance at the inquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Period of Insurance**; and
- b) the attendance arises directly from conduct allegedly committed by the **Insured** in the conduct of the **Business**; and
- c) the **Insurer** agrees in writing to pay the **Inquiry Representation Expenses** before they are incurred and the **Inquiry Representation Expenses** are reasonable in the opinion of the **Insurer**; and
- d) regular or overtime wages, salaries or fees of the **Insured** are excluded.

The total liability of the **Insurer** under this Extension will not be more than the limit stated in the **Schedule** during the **Period of Insurance**.

Joint Venture

The **Insurer** agrees to provide cover for any **civil liability** of the **Insured** which is based on or attributable to the **Insured's** conduct of the **Business** as part of a **Joint Venture**, where:

- a) the name of the Joint Venture is noted in the Schedule or the fees/income derived from participation in the **Joint Venture** have been included in the **Proposal** for the purposes of calculating the premium for this **Policy**; and
- b) the **Joint Venture** is not insured by any more specific insurance in respect of the **Joint Venture**; and
- c) the liability of the **Insured** is not excluded by this **Policy**.

There is no cover under this **Policy** for the **Insured's Joint Venture** partner(s).

Loss of Documents

If the **Insured** first discovers during the **Period of Insurance** that any **Documents** owned by or entrusted to the **Insured** have been destroyed, damaged, lost or mislaid the **Insurer** agrees to provide cover for:

- a) any **civil liability** of the **Insured** which arises as a result of these **Documents** having been destroyed, damaged, lost or mislaid; and
- b) costs and expenses incurred by the **Insured** to replace or restore these **Documents**.

Provided that:

- i. the costs and expenses are supported by accounts approved by a competent person nominated by the **Insurer**.
- ii. the **Insurer** will not pay for any loss brought about by wear, tear, vermin, mould or mildew or any other gradually operating cause.
- iii. the total liability of the **Insurer** during the **Period of Insurance** under this Extension will not be more than the limit stated in the **Schedule**.

Mergers and Acquisitions

If the **Insured** creates or acquires a **Subsidiary or entity** which practices the same type of **Information Technology Services** as the **Business** during the **Period of Insurance**, the **Insurer** will provide indemnity to the **Subsidiary** for **Claims** arising from acts, errors or omissions committed after the time that the entity became a **Subsidiary** for up to thirty (30) days after it was created or acquired.

Cover will be extended after these thirty (30) days if the **Insurer** agrees to indemnify the **Subsidiary** and the **Insured** agrees to any additional terms or payment of premium that the **Insurer** requests.

This Extension does not provide any cover after the expiry of the **Period of Insurance**.

Prior Corporate Entities

The **Insurer** agrees to indemnify the **Insured** for prior corporate entities through which it previously traded in the conduct of the **Information Technology Services**. The **Insurer** will not extend the **Policy** to a prior corporate entity unless the **Insured** directly requests the **Insurer** in writing to do this at the time a **Claim** is made.

Run off cover

The **Insurer** will provide indemnity to any natural person who is an **Insured**, if the person retires or otherwise ceases to provide professional services in connection with the **Business** for **Claims** arising from acts, errors or omissions committed prior to the date that any such person retires or otherwise ceases to provide professional services in connection with the **Business**.

This Extension does not provide any cover after the expiry of the **Period of Insurance**.

Severability

The **Insurer** agrees that any conduct of any party who is an **Insured**, where that party breached the duty of disclosure or made a misrepresentation to the **Insurer** before this contract was entered into, will not prejudice the right of any other party who is an **Insured** to indemnity under the **Policy**. Provided that the other **Insured**:

- a) is innocent of and has no prior knowledge of this conduct; and
- b) immediately upon becoming aware of any of this conduct advises the **Insurer** in writing of all known facts in relation to this conduct.

This Extension does not relieve any **Insured** from the duty of disclosure owed to the **Insurer**.

EXCLUSIONS

This **Policy** does not provide any indemnity in respect of any **Claim**:

Asbestos & Pollution

- a) directly or indirectly arising out of, resulting from or in consequence of or in any way involving asbestos, or any materials containing asbestos, in whatever form or quantity; or
- b) arising from, attributable to or in any way connected with the actual, alleged or threatened dispersal, release or escape of **Pollutants** into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such **Pollutants**, or seepage, pollution or contamination however it occurs.

Avian Technology

arising from, attributable to or in any way connected with computer hardware or software or **Documents** in any aircraft, aircraft parts, aircraft maintenance equipment or spacecraft or aerial devices including hardware, software or **Documents** used for air traffic control or for regulating flight paths.

Bodily Injury and Occupier's Liability

arising from, attributable to or in any way connected with bodily injury, sickness, disease or death of any person (including emotional distress, mental injury or anguish or nervous shock) or as a result of the occupation, control, management or ownership of any real property by an **Insured** or arising from a liability of the Insured as the owner or operator of any aircraft, motor vehicles or watercraft of any kind.

Consensual Claims, Known Defects and Recalls

- a) made, brought or maintained by or on behalf of any person or entity with the solicitation, co-operation or assistance of any **Insured**;
or
- b) arising from, attributable to or in any way connected with Information Technology Services if the Insured is aware that the service or goods are defective, ineffective or unfit for the purpose for which they were provided;
- c) for the cost of recall, withdrawal, re-performance, replacement, repair, modification or inspection of **Information Technology Services** or any part of these services if they are withdrawn from use or sale due to known or suspected defect/s or deficiencies.

Contractual Liability

arising from, attributable to or in any way connected with any duty, obligation or liability assumed by the **Insured** by contract, warranty, guarantee or indemnity, unless the duty, obligation or liability would have existed in any case if the **Insured** had not assumed it.

Dishonesty & Conflict

- arising from, attributable to or in any way connected with any:
- a) dishonest, fraudulent, criminal or malicious conduct or omission of the **Insured**; or
 - b) any **Conflict**.

Directors & Officers Liability

arising directly or indirectly from or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

Employer's Liability

arising from, attributable to or in any way connected with:

- a) the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of or in respect of his/her employment; or
- b) a breach of any obligation owed by an **Insured** to an **Employee**.

Failure to Obtain Insurance

arising from, attributable to or in any way connected with the failure to effect and maintain any or sufficient insurance.

Fines Penalties and Taxes

for any exemplary, aggravated, punitive or liquidated damages, any fines, penalties, tax or duty.

Geographical Limits and Jurisdiction

- a) arising from, attributable to or in any way connected with the application of laws of the United States of America or Canada or their protectorates or territories; or
- b) arising from, attributable to or in any way connected with any act, error or omission occurring in the United States of America or Canada or their protectorates or territories; or
- c) brought in a court within the Territorial Limit to enforce a judgment handed down in a court in the United States of America or Canada or their protectorates or territories;

Insolvency

First made or intimated subsequent to the date upon which the **Insured** becomes **Insolvent**. This Exclusion will not apply if the **Insured** proves that the **Claim** would have occurred even if the **Insured** was not **Insolvent**.

Nuclear Risks, War and Terrorism

directly or indirectly arising from, attributable to or in any way connected with:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- b) war, invasion, acts of foreign enemies or hostilities (whether war be declared or not), civil or military uprising, or usurped power, insurrection, revolution, rebellion, or confiscation or requisition or nationalisation or destruction of or damage to property by or under the order of any local government or public or local authority;
- c) any:
 - i. act of terrorism, as defined in this **Policy**; or
 - ii. action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence.

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public

or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- i. involves violence against one or more persons; or
- ii. involves damage to property; or
- iii. endangers life other than that of the person committing the action; or
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

Prior Circumstances and Claims

arising from, attributable to or in any way connected with any:

- a) facts, circumstances or occurrences noted on the **Proposal** for the current **Period of Insurance** or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b) facts, circumstances or occurrences of which the **Insured** was aware prior to the commencement of the **Period of Insurance** and which the **Insured** knew (or ought reasonably to have realised) may give rise to a **Claim**; or
- c) **Claim** first made against the **Insured** prior to the start of the **Period of Insurance**.

Related Parties

made, brought or maintained by or on behalf of:

- a) any other person or entity who is an **Insured** or is otherwise covered by this **Policy**; or
- b) any **Subsidiary** of an **Insured**; or
- c) any entity of which an **Insured** has or had held at least a 20% financial interest and/or has held or has board representation for that entity.

Trading Debts, Cost Estimates and Refund of Fees

arising from, attributable to or in any way connected with any:

- a) trading debt incurred by the **Insured** or any guarantee given by the **Insured** for any debt; or
- b) any liability to refund professional fees or charges; or
- c) provision of cost guarantees, cost estimates, estimates of projected savings or profits.

DEFINITIONS

The meaning of some of the important words used in this **Policy** are shown here.

Business

The professional business conducted by the **Insured** and described in the **Schedule** against 'Business'.

Civil liability

Liability for compensation, costs and expenses which a court or tribunal of civil jurisdiction orders the **Insured** to pay, including the costs and expenses of the claimant that the **Insured** is liable to pay.

Claim

Any originating process served by a third party upon the **Insured** claiming compensation including a writ, statement of claim, summons, application or other legal or arbitral process.

Computer Equipment

Any combination or part of computer data, computer hardware, computer operating system, computer application, computer software or computer chip including microprocessor chips or embedded control logic.

Conflict

- a) A conflict of interest and duty, where an **Insured** acts for a client's interest while being subject to a contrary interest, being the interest of another client; or
- b) A conflict of interest and duty, where an **Insured** acts for a client while being subject to a contrary interest, being the **Insured's** personal advantage.

Defence Costs

Reasonable legal costs and other expenses incurred by or on behalf of the **Insured** (with the written consent of the **Insurer**) or by the **Insurer** to investigate, defend and/or settle a **Claim**.

Documents

Documents and data of any type including **Electronic Data**, magnetic tapes, written or printed documents of any type including deeds, wills, agreements, maps, plans, books, letters, certificates and forms. Documents does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

Electronic Data

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronics and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment

Employee

Any person:

- a) employed under a contract of service by the **Insured** and remunerated or otherwise compensated for this service; or
- b) who entered into a contract with the **Insured** and obtains at least 90% of his or her income from the **Insured** during the **Period of Insurance**; provided that at the time of the act, error or omission giving rise to the **Claim**, the person was under the **Insured's** direct control and supervision in the conduct of the **Business**.

Employee does not include a director, principal, partner, sole practitioner or agent of the **Insured**.

Excess

The amount(s) shown in the **Schedule** against 'Excess', which is inclusive of **Defence Costs** if it is shown as being 'costs inclusive' in the **Schedule**.

Information Technology Services

- a) any work, service, specification or advice provided by the **Insured** in the conduct of the **Business**, including the provision of data processing, data communication services, data warehousing, telecommunications and computer facilities management; and
- b) any **Computer Equipment** manufactured, produced, assembled, constructed, erected, installed, repaired, serviced, treated, sold, licensed, shared, supplied, re-supplied or distributed by the **Insured** or on the **Insured's** behalf in relation to or in connection with the activities of the **Insured** described in paragraph a) of this definition.

Inquiry Representation Expenses

Necessary and reasonable legal costs and expenses incurred by the **Insured** with the **Insurer's** consent arising out of any notice requiring the **Insured Person's** attendance at an inquiry or proceeding before an official body or professional board in relation to a breach or alleged breach of a professional code of conduct administered by a professional association that is responsible for professional conduct or standards in relation to **Information Technology Services**.

Insolvent

becoming a body corporate:

- a) that is unable to pay its debts as and when they fall due; or
- b) in respect of which an application for winding up has been made; or
- c) in respect of which a Liquidator, Provisional Liquidator, Receiver, Receiver and Manager, or Official Manager has been appointed (whether or not by a Court); or
- d) in respect of which an administrator has been appointed or that is under administration; or
- e) that has executed a Deed of Company Arrangement that has not yet terminated; or
- f) that has entered into a compromise or arrangement with another person.

Insured

- a) any party named in the **Schedule** as an **Insured**; and
- b) any person who is a director, principal, partner, or **Employee** during the **Period of Insurance** when acting on behalf of the **Business**.

Insurer

Calliden Limited (ABN 43 110 186 224, AFSL No 284889)

Joint Venture

An unincorporated enterprise that the **Insured** carries on jointly with some other party or parties.

Limit of Indemnity

The amount shown in the **Schedule** against 'Limit of Indemnity' which is the total liability of the **Insurer** under the **Policy** for all **Claims** in the **Period of Insurance**.

Period of Insurance

The period shown in the **Schedule** against 'Period of Insurance' unless the **Policy** is cancelled earlier.

Policy

This **Policy** document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by the **Insurer** after the start of the **Policy**, and the information given to the **Insurer** on behalf of the **Insured** in the **Proposal**.

Pollutant

Any:

- a) solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b) waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c) other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

Principal

A sole practitioner, partner or a director of the **Insured** named in the **Schedule** or a firm or entity otherwise covered by the **Policy**

Proposal

The written proposal form and all supplementary information and material provided by or on behalf of the **Insured**.

Retroactive Date

The date shown in the **Schedule** against 'Retroactive Date'.

Schedule

The 'Schedule' which attaches to and forms part of this **Policy**.

Senior Counsel

A barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia or the Dominion of New Zealand.

Subsidiary

Any entity:

- a) which is deemed to be a subsidiary of the **Insured** entity named in the **Schedule** at the start of the **Period of Insurance** by Australian law provided the accounts of any **Subsidiary** are incorporated into the accounts of the **Insured** entity named in the **Schedule** in accordance with the relevant accounting standard; or
- b) in which the **Insured** entity named in the **Schedule** controls more than 50% of the issued share capital or has more than one half of the maximum voting rights for any vote at a general meeting of the body corporate or entity.

CLAIMS CONDITIONS

Claims Reporting

The **Insured** must give the **Insurer** immediate notice in writing of any **Claim** within the **Period of Insurance** sent to The Claims Manager, Solution Underwriting, Level 6, 289 Flinders Lane, Melbourne, 3000 or by fax to 03 9654 6200 or by email to claims@solutionunderwriting.com.au

Claims Co-operation and Mitigation

The **Insured** must not make any offer or payment or admit liability for or settle any **Claim** or incur any costs or expenses or assume any liability in connection with a **Claim** without the written consent of the **Insurer**. The **Insured** must not forego, waive, exclude or limit any rights of recovery. The **Insured** must at its own cost, take all reasonably practicable steps to avoid or minimise any liability.

The **Insurer** will not be liable for any settlement or other liability assumed, or costs and expenses incurred by the **Insured** without the written consent of the **Insurer**.

The **Insured** at its own expense will immediately provide to the **Insurer** any assistance and information the **Insurer** reasonably requires to allow the **Insurer** to determine whether or not the **Insured** is entitled to indemnity under this **Policy**, and to enable the **Insurer** to investigate and defend any **Claim**.

Conduct of Defence

The **Insurer** will be entitled at any time to take over and conduct the investigation, defence and/or settlement of any **Claim** in the name of the **Insured**.

Any amounts incurred by the **Insurer** or the **Insured** with the written consent of the **Insurer** in the conduct of the defence of a **Claim** will be part of **Defence Costs**.

If the conduct of the defence of a **Claim** is assumed by the **Insurer**, or the **Insured** is permitted by the **Insurer** to incur costs and expenses in the defence of the **Claim**, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not indicate an **Insured** is entitled to indemnity under the **Policy** or waive or prejudice the **Insurer's** rights under the **Policy**.

Discharge of Liability

If the **Insurer** is of the opinion that the amount required to resolve any **Claim** may exceed the available **Limit of Indemnity**, the **Insurer** is entitled to discharge its liability by electing to pay (or agreeing to pay upon settlement of the **Claim**) the available **Limit**

of **Indemnity** to the **Insured** or on the **Insured's** behalf (including the **Defence Costs** incurred up to the time it makes this election). If the **Insurer** is conducting the defence of the **Claim** at the time it makes this election, the **Insurer** will stop conducting the defence. The **Insurer** will have no further liability for **Defence Costs** after written notice of the election has been given to the **Insured**. If the **Insured** disagrees with a **Claim** settlement recommended by the **Insurer**, the **Insured** may elect to contest a **Claim**. However, the liability of the **Insurer** in respect of the **Claim** will not exceed the amount for which the **Claim** could have been settled plus the **Defence Costs** incurred up to the date of this election, less the **Excess**.

Senior Counsel

If a dispute arises between the **Insurer** and **Insured** as to whether or not to contest any legal proceedings, the **Insurer** and the **Insured** will not be required to contest these legal proceedings unless a **Senior Counsel** advises that these proceedings should be contested. The **Senior Counsel** appointed to advise will be agreed upon by the **Insurer** and the **Insured** but if they can not agree, will be appointed by the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended. **Senior Counsel** will advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the **Insured** and the likely **Defence Costs** that will be incurred in defending the **Claim**. The costs of **Senior Counsel** giving this advice will be part of **Defence Costs**.

Representation Issues

The lawyers instructed by the **Insurer** to act on the **Insured's** behalf can disclose to the **Insurer** any information they receive in that capacity. By claiming under this **Policy** the **Insured** authorises these lawyers to disclose this information to the **Insurer** and waives any claims for legal professional or client privilege against the **Insurer**.

If there is a dispute between the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to conduct the defence of the **Claim** will also continue to advise the **Insurer** on all issues, including but not limited to the right of the **Insured** to indemnity under the **Policy**. It is agreed that this will not prevent those lawyers from acting on the defence of the **Claim** on the instructions of the **Insurer**.

If any actual or potential conflict arises between the interests of the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to investigate and defend the **Claim** may stop acting on behalf of the **Insured** and continue to advise the **Insurer** in any dispute about the entitlement of the **Insured** to indemnity under the **Policy**.

The **Insured** agrees that all communications between the **Insurer** and the lawyers appointed by the **Insurer** to investigate, defend or settle a **Claim** are privileged as between the **Insurer** and the lawyers. The **Insured** is not entitled to demand, access or obtain these communications or information about their contents.

Other Insurance

If for any **Claim** or **Defence Costs** there is any other insurance or indemnity which may provide indemnity to the **Insured** or a right of contribution by the **Insurer**, the **Insured** will notify the **Insurer** and provide full details of that other insurance or indemnity and any further information the **Insurer** may reasonably require.

GENERAL CONDITIONS

Excess

The **Insurer's** liability under this **Policy** will apply only to that part of the amount, up to the available **Limit of Indemnity**, required to dispose of a **Claim**, which exceeds the **Excess**. The **Excess** will be paid by the **Insured** and will be uninsured. The **Excess** is inclusive of **Defence Costs**.

The **Excess** applies to each **Claim** covered by this **Policy**. However, where more than one **Claim** arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one **Excess** is payable under the **Policy**.

Cancellation

The **Insured** can cancel this **Policy** by giving written notice to the **Insurer** at any time. This **Policy** may be cancelled by the **Insurer** in accordance with the Insurance Contracts Act 1984 (Cth).

If the **Insured** cancels the **Policy**, a pro-rata refund of premium for the unexpired portion of the **Period of Insurance** will be allowed, less 15% and any nonrefundable taxes.

Governing Law

This **Policy** is governed by the laws of Australia and the State or Territory where the **Policy** was issued. The courts of the place where the **Policy** was issued will have jurisdiction in any dispute in relation to this **Policy**.

Validity

This **Policy** is not valid unless its **Schedule** is attached and has been signed by an authorised officer or agent of the **Insurer**.

GST Basis of Settlement

The amount that the **Insurer** is liable to pay under this **Policy** will be reduced by the amount of any input tax credit that the **Insured** is or may be entitled to claim for the supply of goods or services covered by that payment.

If the **Insured** is entitled to an input tax credit for the premium, the **Insured** must inform the **Insurer** of the extent of that entitlement when the **Insured** makes a **Claim** under this **Policy**. The **Insurer** will not indemnify the **Insured** for any GST liability, fines or penalties arising from or due to the **Insured's** failure to notify the **Insurer** of the **Insured's** entitlement (or correct entitlement) to an input tax credit on the premium.

If the **Insured** is liable to pay an **Excess** under this **Policy**, the amount payable will be calculated after deduction of any input tax credit that the **Insured** is or may be entitled to claim on payment of the **Excess**.

Interpretation

The paragraph headings are for convenience and do not form part of this **Policy** for the purposes of interpretation of this **Policy** except where they are used for identifying the insuring clauses, exclusions or conditions being referred to. Words and expressions in the singular include the plural and vice versa.

Words (except headings) in bold lettering have a special meaning and are defined in the **Policy**. Words that are not specifically defined in this **Policy** have their normal meaning.

NOTICES

Privacy

Solution Underwriting is committed to protecting the privacy of the personal information you provide to us. Any personal information you give us will be treated in accordance with the Privacy Act 1988.

We require personal information about you to assess your request for insurance and to administer your policy, and also to notify you about our other services or promotions from time to time.

By submitting your personal information to us, you agree to us using and disclosing your personal information for these purposes. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

For details of our Privacy Policy or to request access to or correct your personal information, please contact the Privacy Officer on 03 96554 6100 or by e- mail to solution@solutionunderwriting.com.au or by letter addressed to the Privacy Officer, Solution Underwriting, Level 6, 289 Flinders Lane, Melbourne 3000

General Insurance Code of Practice

The Code aims to raise standards of service between insurers and their customers. For any information about the Code, including a copy of the Code, contact Solution Underwriting (see contact details above under Privacy) or The Insurance Ombudsman Service on 1300 78 08 08 or look at www.codeofpractice.com.au

How we will action Complaint

Any enquiry or complaint relating to this insurance can be referred to Solution Underwriting in the first instance. We have a complaints handling and internal dispute resolution process to assist you, and information about our complaints handling procedures is available upon request.

At Solution Underwriting we strive to make our customers happy. However, if you would like to make a complaint, we will do everything we can to try to resolve it as quickly and easily as possible. The following paragraphs provide details on how you can lodge your complaint and how Solution Underwriting will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Solution Underwriting, including:

- ☐ Our decision on your claim
- ☐ Our handling of your claim
- ☐ The service of our representatives, assessors, loss adjusters or investigators
- ☐ Your insurance policy

Contact us

Call 03 9654 6100 and we will try to resolve your complaint straight away. If we cannot, we will ask you to put your complaint in writing.

You can write to us at:

- ☐ Email: solution@solutionunderwriting.com.au
- ☐ Fax: 03 9654 6200
- ☐ Address: Level 6, 289 Flinders Lane, Melbourne 3000

How we will address a Complaint

We will address all complaints, except where specific circumstances apply, in accordance with Solution's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.

We will handle all complaints without a cost to you.

A complaint consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.

The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.

The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

If your complaint is unresolved

If we cannot resolve your complaint within 15 business days or you are **still** not happy with our response to your complaint, you may be eligible to seek an external review via our external dispute resolution scheme, administered by the Insurance Ombudsman Service (IOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 780 808 or visit www.insuranceombudsman.com.au.

If the IOS is unable to address your complaint then Solution Underwriting will inform you of an alternative dispute resolution scheme.

Solution Underwriting Information Technology Liability Package
Part 2 : Solution Underwriting Broadform Public and Products Liability Policy

TABLE OF CONTENTS	
INSURING CLAUSES...	20
The Cover	20
LIMIT OF LIABILITY AND CLAIM COSTS	20
Limit of Liability	20
Claim Costs	20
Additional Costs	20
EXTENSIONS	21
New Subsidiaries.....	21
Principals.....	21
EXCLUSIONS	21
Aircraft and Watercraft	21
Asbestos.....	21
Computers and Technology	21
Contractual Liabilities	22
Defamation.....	22
Employer's Liability.....	22
Fines and Penalties.....	22
Fraudulent and International Conduct	22
Loss of Use.....	22
Pollution.....	22
Product Defect, Product Recall and Faulty Work	23
Professional Liability	23
Property in your Physical or Legal Control	23
Territorial and Jurisdictional	23
Vehicles.....	23
War, Terrorism, and Nuclear Material	24
DEFINITIONS	24
Act of Terrorism.....	24
Aircraft.....	24
Business.....	24
Excess.....	25
Limit of Liability.....	25
Medical Persons.....	25
Occurrence.....	25
Period of Insurance.....	25
Personal Injury.....	25
Premises.....	25
Premium.....	25
Product.....	25
Products liability.....	26
Property Damage.....	26
Proposal.....	26
Schedule.....	26
Territorial Limit.....	26
Vehicle.....	26
Watercraft.....	26
We, us or our.....	26
You or your.....	26
CONDITIONS	26
Claims Procedures.....	26
Claims Reporting	27
Discharge of Liabilities	27
Premium	27
Inspection	27
Reasonable Care	27
Maintenance of Product Records	28
Alteration of Risk	28
Joint Insureds	28

Cross Liability.....	28
Subrogation	28
GENERAL CONDITIONS	28
Cancellation	28
Excess	29
Jurisdiction	29
Severability	29
Interpretation	29
GST	29
NOTICES	29
Your Duty of Disclosure.....	29
Privacy	30
General Insurance Code of Practice.	30
How we will action a compliment or complaint you have with us	30
Contact us	31
How we resolve complaints	31
If your Complaint is still Unresolved.....	31

IMPORTANT INFORMATION

This Policy is a legal contract between you and us. You have paid, or agreed to pay, us the Premium and we provide the cover specified in this Policy and as set out in your Schedule.

The terms, conditions and provisions of the insurance we offer you are set out in this Policy. It is important that you:

- ☐ read all of the Policy before you buy it to make sure that it gives you the protection you need
- ☐ are aware of the limits on the cover provided and the amounts we will pay you (including any Excess that applies)
- ☐ are aware of the definitions in your Policy. You will find definitions throughout your Policy.

You must comply with all provisions of this Policy, otherwise we may be entitled to refuse to pay a claim or reduce the amount you are entitled to receive.

The Policy is in force for the period of insurance set out in your Schedule or until cancelled.

For the limits on the cover provided:

- ☐ some of these will be stated in the Policy itself (these are our standard policy limits); and
- ☐ the remainder will be stated in your Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If your Policy is endorsed you will receive notification of the endorsement.

In issuing this Policy to you, we have relied upon the proposal form you have already completed.

Solution Information Technology Liability Package

Part 2 : Solution Underwriting Broadform Public and Products Liability Policy

INSURING CLAUSES

The Cover

We insure **you** against all sums which **you** become legally liable to pay as compensation in respect of:

- a) **Personal Injury**; or
- b) **Property Damage**

first occurring during the **Period of Insurance** within the **Territorial Limit** as the result of an **Occurrence** in connection with **your Business**.

We will not indemnify **you** for the matters excluded by this **Policy**.

You must comply with the conditions set out in this **Policy**.

Certain words used in this **Policy** have the meanings given to them in the Definitions section.

Any indemnity provided by **us** to **you** is provided in consideration of payment of the **Premium** by **you** and is subject to the terms and conditions of this **Policy** including the **Limit of Liability** and the **Excess**.

LIMIT OF LIABILITY AND CLAIM COSTS

Limit of Liability

Except as provided in this Section under the heading 'Additional Costs', **our** total liability under this **Policy** to indemnify **you**:

- i. in respect of any one **Occurrence** will not exceed the **Limit of Liability**; and
- ii. for all claims in respect of **Products Liability** during the **Period of Insurance** is limited in the aggregate to the **Limit of Liability**.

All **Personal Injury** and **Property Damage** consequent upon or attributable to one source or originating cause will be deemed one **Occurrence**.

Any entitlement to indemnity under this policy for an **Occurrence** will be determined by reference to the date on which the **Personal Injury** or **Property Damage** from the one source or originating cause first occurred.

Claim Costs

In addition to the cover provided under subsection The Cover, **we** will pay:

- a) costs and expenses incurred by **us**, or by **you** with **our** prior written consent, in the investigation, settlement or defence of any claim for compensation for which **you** are entitled to indemnity under this **Policy**; and
- b) legal costs taxed or assessed against **you** in any claim referred to in paragraph (a) and all interest accruing from the entry of judgment against **you** until **we** have paid, tendered or deposited in court such part of the judgment as does not exceed the **Limit of Liability**; and
- c) reasonable expenses **you** incur at **our** direction or request in assisting **us** in the investigation or defence of any claim but **we** will not pay for loss of earnings.

Additional Costs Claims costs and expenses are part of and can be included in the **Limit of Liability**, however the **we** will indemnify **you** for **these costs** in addition to the **Limit of Liability** for up to:

- i. \$5,000,000; or
- ii. the **Limit of Liability**;

whichever is lesser -

- a) in respect of any one **Occurrence**; and
- b) for all claims in respect of **Products Liability** during the **Period of Insurance** in the aggregate.

If a judgment or an amount required to settle a claim exceeds the **Limit of Liability**, our liability to pay claims costs is limited to the proportion the **Limit of Liability** bears to the amount required to be paid to dispose of the claim and in all cases will not exceed an amount equivalent to the Additional Costs described in the paragraph above.

EXTENSIONS

New Subsidiaries

The cover provided by this **Policy** will extend to any subsidiary company incorporated within the **Territorial Limit** that is incorporated or acquired by **you** during the **Period of Insurance** and relating to **your Business** but only in respect of liability for **Personal Injury** or **Property Damage** occurring in the period commencing on the date of incorporation or acquisition by **you** and ending:

- a) 14 days from the date of incorporation or acquisition by **you**; or
- b) if you have
 - i. notified **us** in writing of the incorporation or acquisition within 60 days; and
 - ii. provided all information that **we** require and **you** have agreed to any additional terms and conditions and **Premium** that **we** may require;

on such date as **we** may in **our** absolute discretion determine, but in any event no cover is provided by this subsection beyond the end of the **Period of Insurance**.

Principals

We insure **you** for liability to indemnify any principal with whom **you** have entered into a contract or agreement for the performance of work if the terms of the contract or agreement require that **you** must indemnify the principal but only:

- a) in relation to work carried out by **you**;
- b) if the liability would have been implied by law in the absence of the contract or agreement; and
- c) in respect of claims for which **you** would be entitled to indemnity under this **Policy** if the claim was made against **you**.

EXCLUSIONS

Aircraft and Watercraft

caused by or arising directly or indirectly out of or in connection with:

- a) the ownership, possession, use, existence, working, navigation, operation, repair, maintenance, servicing, construction or installation by **you** or on **your** behalf of any **Aircraft** or **Watercraft**; or
- b) the use of **your Product** with **your** knowledge in the construction, operation, maintenance, servicing or repair of any **Aircraft** or **Watercraft**.

Asbestos

whatsoever for any claim or claims in respect of **Personal Injury** or **Property Damage** directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

Computers and Technology

- a) the design of any computer hardware or software; or
- b) any **Computer Virus**.

Contractual Liabilities

assumed by **you** under any contract or agreement except where the liability:

- a) would have been implied by law in the absence of the contract or agreement; or
- b) is noted as being covered by **our** written endorsement of the **Policy**.

Defamation

caused by or arising directly or indirectly out of or in connection with publication of a libel, utterance of a slander or defamation:

- a) first made prior to the **Period of Insurance**;
- b) made by **you** or with **your** authority, with knowledge of its falsity or defamatory character; or
- c) in any way related to advertising, broadcasting, publishing or telecasting activities conducted by **you** or on **your** behalf, including but not limited to the publication of material on the Internet.

Employer's Liability

- a) for **Personal Injury** to any person employed by **you** or deemed by law to be employed by **you**; or
- b) imposed or implied by or under:
 - i. any workers compensation act or any other similar law, act or ordinance relating to compensation for injury to any person employed by **you** or deemed by law to be employed by **you**;
 - ii. any industrial award, agreement or determination or any contract of employment or workplace agreement, to the extent that **you** would not have been liable in the absence of that award, agreement, determination or contract; or
 - iii. any law relating to wrongful or unfair dismissal, denial of natural justice, defamation, false or misleading conduct or advertising, misrepresentation, harassment or discrimination in respect of employment by **you**.

Fines and Penalties

for fines, penalties, liquidated, aggravated, exemplary or punitive damages.

Fraudulent and Intentional Conduct

caused by or arising directly or indirectly out of or in connection with:

- a) dishonest, fraudulent, criminal or malicious conduct;
- b) wilful breach of statute; or
- c) conduct intended to cause **Personal Injury** or **Property Damage** (or conduct with reckless disregard for **Personal Injury** or **Property Damage**) by **you** or anyone acting on **your** behalf or with **your** knowledge or connivance.

Loss of Use

for loss of use of tangible property (not physically lost, destroyed or damaged) caused by or arising directly or indirectly out of:

- a) delay or lack of performance by **you** or on **your** behalf under any contract or agreement; or
- b) the failure of **your Product** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **you**, except for loss of use of other tangible property resulting from the sudden and accidental physical loss, destruction or damage to **your Product** after **your Product** has been put to use by any person or organisation other than **you**.

Pollution

for:

- a) **Personal Injury** or **Property Damage** or financial loss or loss of, damage to, or loss of use of property directly or indirectly arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, emission or escape of **Pollutants**; or
- b) the cost of testing, monitoring, containing, removing, nullifying or cleaning up **Pollutants** except liability otherwise excluded under paragraph (a) or (b) that:
 - i. arises from a sudden identifiable, unintended and unexpected happening, which takes place in its entirety at a specific time and place; and
 - ii. is indemnified in not more than one annual **Period of Insurance**.

Product Defect, Product Recall and Faulty Work

- a) for **Property Damage** to **your Product** caused by or arising directly or indirectly out of them or any part of them;

- b) arising directly or indirectly out of or in connection with any warranty or guarantee in relation to **your Product** given by **you** or on **your** behalf, except to the extent that any such warranty or guarantee is implied by any legislation in relation to the safety of products.
- c) caused by or arising directly or indirectly out of or in connection with the withdrawal, inspection, removal, reinstallation, repair, replacement or loss of use of **your Product**, or of any property of which **your Product** forms a part; or
- d) for the cost of repairing, correcting, performing or improving any work or service undertaken or provided by **you** or on **your** behalf.

Professional Liability

caused by or arising directly or indirectly out of or in connection with the rendering of or failure to render professional advice or service by **you** or on **your** behalf or an error or omission in connection therewith but this exclusion does not apply to the rendering or failure to render medical advice by **medical persons** employed by **you** to provide first aid and other medical services on **your Premises**.

Property in your Physical or Legal Control

for **Property Damage** to property owned, leased or hired by or under hire purchase or on loan to **you** or otherwise in **your** physical or legal care, custody or control, other than:

- a) buildings and their contents at **your Premises**, which are leased or rented to **you** for **your Business**;
- b) employees' and visitors' clothing and personal effects;
- c) **Vehicles** (not owned or used by **you** or on **your** behalf or liability for **Vehicles** not otherwise excluded by this **policy**) whilst in a car park owned or operated by **you** other than for reward; and
- d) other property not owned by **you**, not leased to **you** or not rented to **you** but temporarily and legally occupied by **you** or in **your** possession or control however, **we** will not indemnify **you** for damage:
 - i. to that part of such property on which **you** are working or have been working and which arises out of that work; or
 - ii. to any form or type of living animal or creature.

The **Limit of Liability** in respect of coverage provided under paragraph (d) of this Exclusion is \$100,000 for any one occurrence and for all claims during the **Period of Insurance** in the aggregate inclusive of all costs, expenses and interest as set out in Claims Costs and Additional Costs on pages 4 and 5 of this **Policy**.

Territorial and Jurisdictional

- a) caused by or arising directly or indirectly out of or in connection with the application of laws the United States of America or Canada or their protectorates or territories; or
- b) arising from, attributable to or in any way connected with any act, error or omission occurring in the United States of America or Canada or their protectorates or territories; or
- c) brought in a court within the Territorial Limit to enforce a judgment handed down in a court in the United States of America or Canada or their protectorates or territories;

Vehicles

caused by or arising directly or indirectly out of or in connection with the ownership, possession, maintenance, use or control of any **Vehicle**:

- a) which is registered or required to be registered by any legislation or competent authority, except where such liability is caused by:
 - i. the loading or unloading of any **Vehicle** or the delivery or collection of goods to or from any **Vehicle**, where such **Personal Injury** or **Property Damage** occurs beyond the limits of any carriageway or thoroughfare declared as a designated road; or
 - ii. the use of any mechanical tool or plant attached to or forming part of any **Vehicle**, whilst the **Vehicle** is being used at **your Premises** or another work site for the purpose of **your Business** but not whilst the **Vehicle** is in transit or is being used for transport or haulage; or

b) where such liability is insured or required to be insured by any legislation or competent authority.

War, Terrorism, And Nuclear Material

a) caused by or arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution confiscation, nationalisation, requisition or looting, sacking or pillage, destruction of or damage to property by or under the order of any government or local authority;

b) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of 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;

c) for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**; or

d) caused by or arising directly or indirectly out of or in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self-sustaining process of nuclear fission.

DEFINITIONS

The intended meaning of some of the important words used in this **Policy** are shown below:

Act of Terrorism

Includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons;
- b) involves damage to property;
- c) endangers life other than that of the person committing the action;
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

Aircraft

Any vessel, craft, device or thing designed to fly in or through the atmosphere or space including any vessel, craft, device or thing made or intended to be propelled on a cushion of air over the surface of land or water.

Business

The business, trade or profession specified in the **Schedule** including:

- a) the provision and management of canteen, social, sports, welfare and child care facilities by **you** for **your** employees' benefit; and
- b) **your** ownership or occupation of **your Premises. Electronic Data** Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

Computer Virus

An unauthorised application, intrusive codes, programming or computer code segment that is usually self replicating, requires a host program or executable disk segment in which it can be contained, and which destroys or alters an information technology system, host program, other

computer code or data causing undesired program or computer system operations including damage, disruption or the collection of confidential data.

Excess

The amount which **you** have to pay towards the cost of any claim under this **Policy**, excluding costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation.

Limit of Liability

The amount specified in the **Schedule** or elsewhere in the **Policy**.

Medical Persons

Legally qualified medical practitioners, nurses, dentists and first aid attendants.

Occurrence

Any:

- a) event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** neither expected nor intended by **you**; or
- b) intentional act, by **you** or at **your** direction, resulting in **Personal Injury** but only if such **Personal Injury** arises solely from the use of reasonable force for the purpose of protecting persons or property.

Period of Insurance

The period shown in the **Schedule**.

Personal Injury

- a) bodily injury, sickness or disease, including death, shock, fright, mental anguish, mental injury or disability;
- b) unlawful arrest, wrongful detention or false imprisonment;
- c) wrongful entry or eviction or other invasion of privacy; or
- d) a publication of a libel or utterance of a slander or other defamatory material.

Policy

This **Policy** document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by **us** after inception of the **Policy**, and the information given to **us** on behalf of **you** in the **Proposal**.

Pollutant

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

Premises

The **Business** premises specified in the **Schedule**.

Premium

The amount payable by **you** for the insurance provided by **us** under this **Policy** including all applicable taxes, duties and imposts.

Product

Any thing or things (including any packaging, containers,

directions, markings, instructions, warnings or specifications) manufactured or deemed manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by **you** or on **your** behalf in the course of **your Business** after physical possession has been passed to others.

Products liability

Liability for **Personal Injury** or **Property Damage** arising out of **your Product** but only if the **Personal Injury** or **Property Damage** occurs away from **your Premises** or **Premises** leased or rented to **you** and after physical possession of **your Product** has been passed to others.

Property Damage

- a) Physical loss, destruction or damage to tangible property, including loss of use of that property at any time resulting therefrom; or
- b) Loss of use of tangible property not physically lost, destroyed or damaged where such loss of use results from physical loss, destruction or damage to other tangible property.

Proposal

The form completed by **you** giving answers, particulars and statements in respect of the insurance required by **you**.

Schedule

The certificate issued by **us** which forms part of this **Policy** and shows **your** policy number, the **Premium**, the insurance cover selected by **you** and any special terms and conditions or endorsements.

Territorial Limit

Anywhere in the world except the United States of America or Canada or their protectorates or territories.

Vehicle

Any machine on wheels or self-laid tracks, designed to be propelled by other than manual or animal power and any trailer or other attachment designed to be drawn by any such machine but not including an **Aircraft** or **Watercraft**.

Watercraft

Any vessel, craft, device or thing designed to float on or in water or to travel on or through water, the hull length of which exceeds 8 metres.

We, us or our

Calliden Limited (ABN 43 110 186 224, AFSL No 284889).

You or your

Each person, company or other entity specified in the **Schedule** as being insured under this **Policy** and also includes:

- a) all subsidiary companies incorporated within the **Territorial Limit** and notified to **us**, existing before the inception date of this **Policy** and declared in the **Proposal** whose business falls within the definition of 'Business';
- b) any:
 - i. director, executive, officer, employee, partner, or shareholder of **your Business**;
 - ii. office bearer or member of a canteen, social, sports, welfare; first aid or child care facility provided by **your Business** for employees' benefit; while acting in that capacity.

CONDITIONS

As a precondition to **your** entitlement to indemnity under this **Policy**, **you** must comply with these conditions. If **you** do not comply, **we** reserve **our** rights to refuse to pay a claim or to reduce (in some cases to nil) the amount **you** would otherwise be entitled to receive.

Claims Procedures

In circumstances that give rise to or may give rise to a claim under this **Policy**:

- a) **you** must notify **us** as soon as possible of all such circumstances and provide all reasonable information and assistance that **we** may require, including details of any other insurance or indemnity to which **you** may be entitled in relation to the **Occurrence** giving rise to the claim;
- b) **you** must not admit liability or settle or attempt to settle any claim without **our** written consent; and
- c) **we** may take over and conduct, in **your** name, the defence or settlement of any claim and **we** will have full discretion in the conduct of any proceedings in connection with a claim.

Claims Reporting

Notice in writing of any claim should be sent to The Claims Manager, Solution Underwriting, Level 6, 289 Flinders Lane, Melbourne VIC 3000 or by fax to 03 9654 6200 or by email to solution@solutionunderwriting.com.au

Discharge of Liabilities

- a) **We** may at any time pay to **you**, or on **your** behalf, in respect of any claim:
 - i. the amount of the **Limit of Liability**; or
 - ii. any lesser sum for which the claim can be settled after deduction of any sum already paid as compensation in respect of the claim.
- b) Upon the payment set out in paragraph (a), **we** will relinquish control of the claim and be under no further liability under this policy in connection with the claim except for costs, charges and expenses:
 - i. recoverable from **you** in respect of the period prior to the date of the payment, whether or not pursuant to an order made subsequently; and
 - ii. incurred by **us** or incurred by **you** with **our** written consent prior to the date of the payment.
- c) **We** will not pay for any claim or judgment or defend any claim after **our Limit of Liability** has been exhausted.

Premium Adjustment

- a) Unless otherwise indicated, the **Premium** for **your** insurance under this **Policy** is adjustable.
- b) If the first or renewal **Premium** for this **Policy** is calculated on information and estimates furnished by **you**, **you** must:
 - i. keep an accurate record containing all relevant particulars and allow **us**, **our** agents and representatives, to inspect them at all times; and
 - ii. within two months of the end of each **Period of Insurance** furnish them to **us**.

Inspection

If required by **us**, **you** must allow **us** and **our** agents and representatives:

- a) to inspect **your Premises** and operations at any time during normal business hours; and
- b) to examine and audit **your** books and records at any time during the **Period of Insurance** and within three years of the final termination of cover under this **Policy** but **we** make no representation or warranty that either **your Premises** or **your Business** complies with any law or meets any standard.

Reasonable Care

you must:

- a) take all reasonable precautions to prevent or minimise loss, damage or liability including preserving, without alteration, damaged property, defective property and property that may provide evidence in relation to any claim, until **we** have had an opportunity to inspect it;
- b) at **your** own expense take all reasonable precautions to prevent **Personal Injury** and **Property Damage** and comply with all statutory obligations for the safety of persons and property including all reasonable steps:
 - i. to trace, recall or modify any product containing any defect or deficiency of which **you** have knowledge or which **you** have reason to suspect contains any defect or deficiency;
 - ii. in the event of an **Occurrence**, to prevent other **Personal Injury** or **Property Damage** from arising out of the same or similar circumstances; and
 - iii. to ensure the safety and sound condition of **your Premises** and **your Product** including complying with all applicable statutory obligations concerning **your Premises** and **your Product**;
- c) only employ competent employees; and
- d) comply with all statutory obligations, laws and regulations imposed by any competent authority in relation to any matter covered by this **Policy**.

Maintenance of you Records

must keep and maintain, for at least 10 years after the date **Product** upon which they are brought into existence or come into **your** possession or control, documents and records:

- a) relating to research and development, specification, design and manufacturing of **your Product**;
- b) showing the source and quality of components of **your Product**;
- c) identifying persons and entities comprising the distribution chain for **your Product**;
- d) comprising sales records, including batch number and destination of **your Product**; and
- e) detailing quality control, inspection, testing, repairs, replacements and recalls of **your Product**.

Alteration of Risk

you must immediately notify **us** in writing of any alteration to the facts or circumstances relating to **your Business** that existed when **we** agreed to insure **you** under this **Policy**. If **we** agree in writing to insure the altered risk, **you** must pay any additional **Premium** requested by **us**. If **we** do not agree to insure the altered risk or if **you** do not pay the additional **Premium**, **we** will not indemnify **you** for any liability caused by or arising directly or indirectly out of or in connection with such alteration.

Joint Insureds

Where **you** comprise more than one party:

- a) the **Proposal** is deemed to have been furnished by and on behalf of all parties and any information supplied to **us** or any omission, misrepresentation, or non-disclosure in relation to the **Proposal** or any renewal or extension of this **Policy** is deemed to have been furnished, supplied, omitted, misrepresented or not disclosed on behalf of all parties; and
- b) the conduct (other than conduct referred to in Exclusion – Fraudulent and Intentional Conduct) of one or more of **you** will not prejudice the rights of the remainder of **you** provided that the remainder of **you**, immediately on becoming aware of any conduct that increases the risk of liability insured by this **Policy**, gives notice in writing to **us** and pays any additional **Premium** that **we** may require.

Cross Liability

Where **you** comprise more than one party, each of **you** is considered as a separate legal entity and the expressions '**you**' and '**your**' apply to each party as if a separate policy had been issued to each of the parties but **our** aggregate liability is limited to the **Limit of Liability**.

Subrogation

If **we** make a payment under this **Policy** to **you** or on **your** behalf then, subject to the Insurance Contracts Act 1984 as amended from time to time, **we** will be subrogated to all of **your** rights of recovery against all persons and **you** must, at **our** request and expense, take all reasonable steps and provide all assistance reasonably necessary to assist **us** in the exercise of **our** rights.

GENERAL CONDITIONS

Cancellation This **Policy** may be cancelled by:

- a) **you** at any time notifying **us** in writing, in which case:
 - i. cancellation takes place when **we** receive the notice; and
 - ii. **we** will retain, or be entitled to, **Premium** for the period during which this **Policy** has been in force based on **our** normal short period rates together with any administration expenses and non-refundable taxes and duties.
- b) **us** on any grounds set out in the Insurance Contracts Act 1984, as amended from time to time, by giving **you** notice in writing, in which case **we** will refund the **Premium** paid for the unexpired part of the **Period of Insurance**.

You must supply **us** with such particulars as **we** may require for the adjustment of the **Premium** following any cancellation.

Excess

In respect of any liability for which **you** are entitled to indemnity under this **Policy**, **you** will bear the amount of the **Excess** and **we** will only be liable to indemnify **you** for that part of any loss or claim which is greater than the **Excess**. Costs and expenses incurred by **you** in the investigation, settlement or defence of any claim for compensation for which **you** are entitled to indemnity under this **Policy** are not included in the **Excess** and shall not be applied to erode the **Excess**.

Jurisdiction

This **Policy** is governed by the laws of the State or Territory where it is issued and all disputes in respect of this **Policy** will be submitted to the exclusive jurisdiction of the courts of that State or Territory.

Severability

A term or condition of this **Policy** that is illegal or unenforceable may be severed from this **Policy** and the remaining terms and conditions of this **Policy**, or parts thereof, continue in force.

Interpretation

The singular includes the plural and vice versa, unless the context otherwise requires. A reference to a person includes a body corporate, an unincorporated body or other entity. Headings are for convenience only and do not affect interpretation except where they are used for identifying the insuring clauses, exclusions or conditions being referred to. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

GST

GST and input tax credit have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time. Taxable percentage means **your** entitlement to an input tax credit on the **Premium** as a percentage of the total GST on that **Premium**.

If **we** are liable to pay an amount to **you** or on **your** behalf under this **Policy** and **you** have paid or are liable to pay an amount for GST on acquisitions in connection with **your** claim, **we** will indemnify **you** for that GST amount, less any input tax credit **you** are or may be entitled to claim for **your** acquisitions. The **Limit of Liability** is inclusive of this amount.

You must advise **us** of **your** correct taxable percentage. Any GST liability arising from **your** failure to do so is payable by **you**.

If the **you** are liable to pay an **Excess** under this **Policy**, the amount payable will be calculated after deduction of any input tax credit that **you** are or may be entitled to claim on payment of the **Excess**.

NOTICES

Your Duty of This Policy is subject to the Insurance Contracts Act 1984. Under **Disclosure** that Act you have a duty of disclosure.

Before you take out insurance with us, you have a duty to tell us of everything that you know, or could reasonably be expected to know, that is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same duty to inform us of those matters before you renew, extend, vary, or reinstate your contract of insurance.

Your duty however does not require disclosure of matters that:

- a) reduce the risk
- b) are common knowledge
- c) we know or, in the ordinary course of our business, ought to know; or
- d) we have indicated we do not want to know

If you do not comply with your duty of disclosure, we may be entitled to:

- a) reduce our liability for any claim
- b) cancel the contract
- c) refuse to pay the claim
- d) avoid the contract from its beginning, if your non-disclosure was fraudulent.

Privacy

Solution Underwriting is committed to protecting the privacy of the personal information you provide to us. Any personal information you give us will be treated in accordance with the Privacy Act 1988.

We require personal information about you to assess your request for insurance and to administer your policy, and also to notify you about our other services or promotions from time to time.

By submitting your personal information to us, you agree to us using and disclosing your personal information for these purposes. This consent to the use and disclosure of your personal information remains valid unless you alter or revoke it by giving us written notice.

For details of our Privacy Policy or to request access to or correct your personal information, please contact the Privacy Officer on 03 9654 6100 or by e- mail to privacy@solutionunderwriting.com.au or by letter addressed to the Privacy Officer, Solution Underwriting, Level 6, 289 Flinders Lane Melbourne, 3000

General Insurance Code of Practice

The Code aims to raise standards of service between insurers and their customers. For any information about the Code, including a copy of the Code, contact Solution Underwriting (see contact details above under Privacy) or The Insurance Ombudsman Service on 1300 780 808 or look at www.codeofpractice.com.au

How we will action a compliment or complaint you have

At Solution Underwriting we strive to make our customers happy. We would love to hear from you if you have been particularly pleased with Solution's, or our agents', services to you. Please email us on **with us** feedback@solutionunderwriting.com.au

However, if you would like to make a complaint, we will do everything we can to try to resolve it as quickly and easily as possible. The following paragraphs provide details on how you can lodge your complaint and how Solution Underwriting will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Solution Underwriting, including:

- Our decision on your claim
- Our handling of your claim
- The service of our representatives, assessors, loss adjusters or investigators
- Your insurance policy

Contact us

Call 03 9654 6100 and we will try to resolve your complaint straight away. If we can not, we will ask you to put your complaint in writing.

You can write to us at:

- Email: customerservice@solutionunderwriting.com.au
- Fax: 03 9654 6200
- Address: Level 6, 289 Flinders Lane

How we resolve Complaints

We will address all complaints, except where specific circumstances apply, in accordance with Solution Underwriting's Complaints Handling Process. This process is compliant with the General Insurance Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.

We will handle all complaints without cost to you.

A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within 2 business days of receipt. If further information is required to consider the complaint, it will be requested at this time.

The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.

The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

If your complaint is still unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your complaint, you may be able to seek an external review via our external dispute resolution scheme, administered by the Insurance Ombudsman Service (IOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between Insureds and their Insurance companies.

For more information call 1300 780 808 or visit www.insuranceombudsman.com.au

If the IOS is unable to address your complaint then Solution Underwriting will inform you of an alternate dispute resolution scheme.