

solution.

Commercial Legal Protection Insurance Policy Wording

Policy Wording

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Commercial Legal Protection Policy

Please read this **Policy** carefully and ensure that **You** understand its terms including, but not limited to: the cover being provided; the conditions relating to the cover; and the exclusions to cover.

Important Information

The information set out in this Section is not intended to amend the terms and conditions of this **Policy** in any way. The intent of this Section is to highlight the important benefits **You** are entitled to:

1. Your Duty of Disclosure

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

You have this duty until **We** agree to insure **You**.

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

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.

2. Legal Advice Service

You can contact the Legal Advice Service provider legal.advice@sparke.com.au for legal advice on any problem directly related to **Your Core Business Activities**. The advice available is limited to the law of and conduct of business in Australia and is only available to **You** if **Your Core Business Activities** are conducted within the Commonwealth of Australia.

3. Privacy Statement

Solution Underwriting is committed to protecting individuals' personal information. A copy of their privacy policy can be made available on request. Please contact:

Compliance Department
Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: compliance@solutionunderwriting.com.au

4. National Privacy Principles ("NPPs")

Solution Underwriting Pty Ltd (ABN 68 139 214 323) ('Solution') abides by the National Privacy Principles established under the *Privacy Amendment (Private Sector) Act 2001*. This sets out the standards to be met in the collection, use, disclosure and handling of personal information. Solution is subject to the Australian Privacy Principles as set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth), which applies from 12 March 2014.

5. General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

6. Complaints and disputes

If **You** have any concerns or wish to make a complaint in relation to this **Policy**, **Our** services or **Your** insurance claim, please let **Us** know and **We** will attempt to resolve **Your** concerns in accordance with **Our** Internal Dispute Resolution procedure. Please contact the **Coverholder** in the first instance:

Compliance Department
Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: compliance@solutionunderwriting.com.au

We will acknowledge receipt of **Your** complaint and do **Our** utmost to resolve the complaint to **Your** satisfaction within 10 business days.

If **We** cannot resolve **Your** complaint to **Your** satisfaction, **We** will escalate **Your** matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to **You** within 30 calendar days of the date on which **You** first made the complaint unless certain exceptions apply.

You may refer **Your** complaint to the Australian Financial Complaints Authority (AFCA), if **Your** complaint is not resolved to **Your** satisfaction within 30 calendar days of the date on which **You** first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If **Your** complaint is not eligible for consideration by AFCA, **You** may be referred to the Financial Ombudsman Service (UK) or **You** can seek independent legal advice. **You** can also access any other external dispute resolution or other options that may be available to **You**.

We agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon **Us** may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000

who has authority to accept service on **Our** behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

7. Making a Claim

In the event of a **Claim** arising under this **Policy** immediate notice should be given to:

Proclaim Management Solutions Pty. Ltd
271 Collins Street
Melbourne, VIC 3000
Email: legalexpenses@proclaim.com.au

Welcome to the Lloyd's Market

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. It is often the first to insure emerging, unusual and complex risks.

Around 80 syndicates are underwriting insurance at Lloyd's, covering all classes of business. Together they interact with thousands of brokers daily to create insurance solutions for businesses in over 200 countries and territories around the world. Lloyd's insures the majority of FTSE 100 and Dow Jones industrial average companies.

Lloyd's enjoys strong financial security supported by excellent ratings.

Visit www.lloyds.com for more information.

Commercial Legal Protection Policy Wording

1. Definitions

For the purposes of this **Policy**, the following terms shall have the respective meanings set out below when they appear in bold in this **Policy** regardless of whether they appear before or after the place in this **Policy** where they are defined. Grammatical variations of such terms shall have corresponding meanings.

- 1.1 **Aggregate Claims Limit** means the amount specified in the **Schedule** being the maximum amount **We** will pay to **You** for all **Claims** in the **Policy Period**.
- 1.2 **Any One Claim** means all **Claims** arising from the same originating cause, event or circumstances which will be treated as a single **Claim** for the purposes of this **Policy**.
- 1.3 **Applicable Law** means, with respect to any **Person**, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the “Law”) relating or applicable to such **Person**, property, transaction, event or matter and includes any interpretation, bulletins, circular letters, guidelines, instruments, provisions, notices and policy statements published or issued in respect of any such Law by any **Person** having jurisdiction over the Law, or charged with its administration or interpretation and also shall include any economic and trade sanctions, anti-bribery laws and personal data laws and regulations.
- 1.4 **Appointed Professional** means any legal advisor, financial advisor or other professional advisor or third-party **Person** appointed by the **Claims Manager** to act on **Your** behalf.
- 1.5 **ATO** means the Australian Taxation Office or appropriate government authority charged with the administration of **Tax Legislation**.
- 1.6 **Business Premises** means the premises from which **You** conduct and/or undertake **Your Core Business Activities**.
- 1.7 **Claim** means a claim under this **Policy** related to a dispute which is made and communicated in accordance with clause 4.3 during the **Policy Period**.
- 1.8 **Claim Amount** means the amount of indemnity being claimed by **You** from **Us** for a **Claim**.
- 1.9 **Claims Manager** means Proclaim Management Solutions Pty Ltd, 271 Collins Street Melbourne, VIC 3000.
- 1.10 **Communicable Disease** means any infectious, communicable or contagious disease, and any mutation or variation thereof, which:
 - 1.10.1 can be caused by any substance or agent including, but not limited to, a virus, bacterium, parasite, microorganism or any other pathogen (whether living or not); and
 - 1.10.2 can be transmitted from organism to organism regardless of the method of transmission including, but not limited to, by direct or indirect airborne transmission; bodily fluid transmission; transmission from or to any surface or object, solid, liquid or gas.

For the avoidance of doubt **Communicable Disease** includes (but is not limited to) coronavirus disease 2019 (COVID-19) and any mutation or variation thereof.
- 1.11 **Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature, including ‘Trojan Horses’, ‘worms’ and ‘time or logic bombs’.
- 1.12 **Construction Services** means
 - 1.12.1 the construction or erection of buildings, spas and swimming pools,
 - 1.12.2 alterations, additions, extensions, refurbishment, repairs, replacement, reinstatement conversion or demolition of pre-existing buildings or structures;
 - 1.12.3 landscaping.
- 1.13 **Core Business Activities** means the principal areas or activities specified in the **Schedule**.

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- 1.14 **Court or Tribunal** means a court, tribunal or other **Statutory Body** within the Commonwealth of Australia and its external territories that have jurisdiction in respect of the **Applicable Laws**.
- 1.15 **Coverholder** means Solution Underwriting Agency Pty Ltd (ABN 68 139 214 323).
- 1.16 **Debt Recovery Professional** means the **Person** named as 'Debt Recovery Professional' in the **Schedule**.
- 1.17 **Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- 1.18 **Excess** means the agreed amount specified in the **Schedule** that **You** are required to pay towards a **Claim** in respect of each **Claim**.
- 1.19 **GST** means goods and services tax.
- 1.20 **Heads of Cover** means the heads of cover listed in this **Policy** in Section 1 for which **We** will indemnify **You** for in accordance with the terms of this **Policy**.
- 1.21 **Opponent** means any third-party **Person** who **You** are engaged in a dispute with.
- 1.22 **Opponent's Costs** means the legal fees and disbursements of an **Opponent** arising from a dispute which are either:
- 1.22.1 ordered by a **Court or Tribunal** to be paid by **You** to an **Opponent**; or
 - 1.22.2 agreed by the **Claims Manager** in a negotiated settlement with an **Opponent** as payable by **You** to an **Opponent**.
- 1.23 **Person** means any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organisation or other legal entity.
- 1.24 **Policy** means the insurance contract entered into between **You** and **Us** which consists of this policy wording and the **Schedule**.
- 1.25 **Policy Limits** means the maximum amounts **We** will pay under this **Policy**, as stated in the **Schedule**, in respect of **Any One Claim** and for all **Claims** in the **Policy Period**, the **Aggregate Claims Limit**.
- 1.26 **Policy Period** means the period for which this **Policy** is in force as specified in the **Schedule**.
- 1.27 **Positive Outcome** means a financial outcome that is more favourable to **You** as a consequence of the continuance of any proceedings after **We** determined there were no **Reasonable Prospects** having regard to the offers that were made before that determination and the costs incurred before and after that determination.
- 1.28 **Reasonable Prospects** means it is more probable than not that the determination of the dispute at a final hearing will:
- 1.28.1 in respect of a dispute brought against **You**, result in **You** obtaining a better outcome than the compensation or remedy sought by the **Opponent**, and
 - 1.28.2 in respect of a dispute brought by **You**, result in **You** obtaining a better outcome than has been offered to **You** by the **Opponent**; and
 - 1.28.3 in respect of an appeal, it is more probable than not that **You** will on appeal obtain a more favourable outcome than the judgement or decision appealed; and
 - 1.28.4 in respect of a **Claim** under 2.3 Heads of Cover 3: Statutory Licence Protection it is more probable than not that **You** will overturn the suspension, revocation or amendment of the **Statutory Licence**.
- 1.29 **Relating To** means relating to; in connection with; arising under; arising out of; arising from; as a result of; resulting from; as a consequence of; attributable to; contributed to by; caused by; involving.
- 1.30 **Schedule** means the schedule to this **Policy**.
- 1.31 **Significant Financial Loss** means \$5,000.
- 1.32 **Statutory Body** means a government department, agency or body, and judicial officers appointed by any government charged with the administration of, and investigation into, compliance with **Applicable Law** in the **Territorial Limits**.

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- 1.33 **Statutory Licence** means a licence granted to **You** by the government or a local authority which is utilised by **You** to conduct **Your Core Business Activities**.
- 1.34 **Tax Legislation** means any Commonwealth legislation which imposes obligations in relation to income tax, **GST** or fringe benefits tax.
- 1.35 **Territorial Limits** means the Commonwealth of Australia and its external territories and all Australian States and Territories.
- 1.36 **Us/We/Our** means Certain Underwriters at Lloyd's of London specified as 'Insurer' in the **Schedule**.
- 1.37 **You/Your** means the **Persons** or commercial entity named as 'Insured' in the **Schedule**.
- 1.38 **Your Costs** means the reasonable legal and professional fees and disbursements an **Appointed Professional** incurs on **Your** behalf in the course of pursuing or defending a **Claim** which are payable by **You** to the **Appointed Professional**.

2. Heads of Cover

We will indemnify **You** under the following **Heads of Cover**, subject always to the terms of this **Policy** including, but limited to, the applicable **Policy Limits** and **Excess**:

2.1 Head of Cover 1: Contractual Disputes

2.1.1 Subject to clause 2.1.2, **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** arising from a dispute between **You** and **Your Opponent** in respect of an alleged breach, whether by **You** or by **Your Opponent**, of the terms of a written contract entered into by **You** and **Your Opponent** for the supply of goods and/or services.

2.1.2 **We** have no liability for a **Claim** under clause 2.1.1 where:

2.1.2.1 The **Claim Amount** is less than either:

- (a) \$5,000 (five thousand Australian dollars); or
- (b) the applicable small claims threshold stipulated by the **Court or Tribunal** in which proceedings relating to the dispute are or will be commenced.

2.1.2.2 The **Claim Amount** is likely to exceed 75% (seventy-five percent) of the total amount in dispute.

2.1.2.3 Written notice of the dispute was served by/on **You** within 90 (ninety) calendar days of the commencement of this **Policy**.

2.1.3 **We** will not indemnify **You** under this **Head of Cover** for:

2.1.3.1 A dispute which relates to any contract other than for the supply of goods and/or services.

2.1.3.2 A dispute which relates to any contract entered into by **You** in respect of which coverage under any other **Head of Cover** in this **Policy** is applicable and therefore indemnity shall be provided in accordance with the terms of that **Head of Cover**, subject to the terms of that **Head of Cover**.

2.1.3.3 A dispute which relates solely to non-payment where **You** or an **Opponent** has failed to pay in a timely manner in accordance with the terms of the relevant contract save for where **You** have completed the debt recovery process outlined in clause 2.7 Head of Cover 7: Debt Recovery.

2.1.3.4 A dispute arising from a contract relating to **Construction Services** unless:

- (a) **Your Core Business Activities** include **Construction Services**; and
- (b) the dispute is with a supplier directly related to the **Construction Services** undertaken by **You** as part of **Your Core Business Activities**.

2.1.3.5 A dispute arising from a contract:

- (a) for employment;
- (b) for the provision of insurance, securities, financial accommodation, credit or guarantees;
- (c) relating to a motor vehicle;

(d) for the occupation of property including leases, tenancy agreements or a licence to occupy;

(e) for the sale or purchase of real property.

2.1.3.6 disputes over franchise agreements.

2.1.3.7 the breach or alleged breach of a professional duty owed by **You** in connection with the provision of professional services or advice.

2.2 Head of Cover 2: Tax Audit

2.2.1 Subject to clause 2.2.2, **We** will indemnify **You** for **Your Costs** in responding to an audit by the **ATO** in respect of:

2.2.1.1 An investigation or inquiry into **Your** tax affairs by the **ATO** in accordance with **Tax Legislation**;

2.2.1.2 A claim from the **ATO** that:

(a) additional **GST** is due from **You**;

(b) additional income tax or fringe benefits tax is due from **You** in accordance with **Tax Legislation**.

2.2.2 **We** have no liability for a **Claim** under clause 2.2.1 where:

2.2.2.1 Written notice of an audit by the **ATO** has been served on **You** within 90 (ninety) calendar days of the commencement of this **Policy**.

2.2.2.2 the tax returns which are the subject of the dispute:

(a) were not lodged by a suitably qualified and licenced accountant or tax professional appointed by **You** to prepare and lodge **Your** tax returns;

(b) were not lodged within the relevant statutory time limits;

2.2.2.3 **You** have not made all payments for due taxes and provided all necessary documentation to the **ATO** within the relevant time limits specified by the **ATO**.

2.2.3 **You** must notify the **Claims Manager** as soon as possible if **You** are in receipt of a notice of audit. **You** must advise the **Claims Manager** of any notice from the **ATO** notifying **You** of the end of an audit and from the date the notice is received by **You** **We** will not be liable for **Your Costs** which are incurred after the end of the audit.

2.2.4 **We** will not indemnify **You** under this **Head of Cover** for:

2.2.4.1 routine responses to requests for information and other contacts with the **ATO** which do not amount to an audit of **Your** tax affairs, including but not limited to lodgement of Business Activity Statements, and superannuation payments and returns.

2.2.4.2 costs which are not directly incurred in relation to the audit which is the subject of the **Claim**. If **Your Appointed Professional** conducts additional work outside of the scope of the **Claim**, costs will be apportioned as appropriate to ensure that only those costs directly incurred in relation to the audit are indemnified.

2.2.4.3 costs incurred as a result of an audit arising from a change in **Applicable Law** (including but not limited to **Tax Legislation**) which has retrospective effect.

2.2.4.4 costs incurred in relation to action taken by the **ATO** once an audit or investigation is transferred to the department in the **ATO** responsible for prosecution of offences under the Tax Legislation.

2.2.4.5 costs in relation to professional services advising on tax avoidance schemes or other attempts to avoid due payment of tax or superannuation of any kind, and audits relating to such schemes.

2.3 Head of Cover 3: Statutory Licence Protection

- 2.3.1 We will indemnify **You** for **Your Costs** and **Your Opponent's Costs** incurred in seeking to protect **Your** rights under a **Statutory Licence** which is under threat of suspension, revocation or amendment, which, if not disputed, will have a financial impact on **Your** ability to conduct **Your Core Business Activities**.
- 2.3.2 We will not, and are not liable to indemnify **You** for any **Claim** under clause 2.3.1 where the **Statutory Licence** which is the subject of the **Claim** is utilised by **You** to generate less than 20% (twenty percent) of **Your** gross operating income.
- 2.3.3 We will not, and are not liable to indemnify **You** under this **Head of Cover** for any dispute relating to a **Statutory Licence** which is:
- 2.3.3.1 suspended, revoked or amended as a result of a general industry wide policy rather than for a reason particular to **You**;
 - 2.3.3.2 a first application for, or a renewal of a **Statutory Licence** due to lapse of time;
 - 2.3.3.3 due to a suspension, revocation or amendment arising from a change in **Applicable Law**.

2.4 Head of Cover 4: Landlord Disputes

- 2.4.1 We will indemnify **You** for:
- 2.4.1.1 **Your Costs** and **Your Opponent's Costs** arising from a dispute with **Your** commercial landlord arising out of an alleged breach of the lease, tenancy agreement or licence in place in respect of **Your Business Premises**;
 - 2.4.1.2 Where **Your Core Business Activities** are those of a commercial landlord, **Your Costs** and **Your Opponent's Costs** arising from a dispute with a tenant over an alleged breach of the lease, tenancy agreement or licence in place in respect of commercial premises leased to them by **You**;
- provided that the consequences of not pursuing or defending the dispute include that **You** will suffer **Significant Financial Loss** and **Your Costs** are reasonable and proportionate having regard to the costs to be expended and the benefit **You** will obtain.
- 2.4.2 It is a precondition to indemnity for a **Claim** under clause 2.4.1.2 that **You** have served any and all required statutory and/or contractual notices prior to any dispute.
- 2.4.3 We will not indemnify **You** under this **Head of Cover** for any dispute arising:
- (a) from the first negotiation of a lease, tenancy agreement or licence;
 - (b) from the renewal, renegotiation or review of a lease, tenancy agreement or licence at normal expiry;
 - (c) solely from a failure to pay rent or other amounts due under the terms of a lease, tenancy agreement or licence;
 - (d) from a contract or agreement which is not a lease, tenancy agreement or licence.

2.5 Head of Cover 5: Restrictive Covenants

- 2.5.1 Subject to clause 2.5.2, We will indemnify **You** for **Your Costs** and **Your Opponent's Costs** arising from a dispute with a former employee in relation to an alleged breach of a restrictive covenant, either by **You** or the former employee, contained within a written employment contract between **You** and the former employee.
- 2.5.2 We have no liability for a **Claim** under clause 2.5.1 where:
- 2.5.2.1 the restrictive covenant is unreasonable as to scope or duration; or
 - 2.5.2.2 the alleged breach by the former employee will not have a material detrimental effect on **Your** business' revenue generation; or
 - 2.5.2.3 there will be no financial benefit for **You** if the restraint is enforced.
- 2.5.3 We will not, and are not, liable to indemnify **You** under this **Head of Cover** for any restrictive covenant exceeding 12 (twelve) months in duration.

2.6 Head of Cover 6: Third Party Damage to Good or Premises

- 2.6.1 We will indemnify **You** for **Your Costs** and **Your Opponent's Costs** of pursuing a third party who has by their own act or omission caused **You** uninsured losses by causing physical damage to **Your Business Premises**, or goods, machinery or other property located at **Your Business Premises**.
- 2.6.2 We will not, and are not, liable to indemnify **You** under this **Head of Cover** for any damage:
 - 2.6.2.1 caused by **You** or **Your** employees;
 - 2.6.2.2 to goods not at **Your Business Premises**, unless the goods are under **Your** direct care and control;
 - 2.6.2.3 to a motor vehicle, except where stationary and located at **Your Business Premises**.

2.7 Head of Cover 7: Debt Recovery

- 2.7.1 We will indemnify **You** for **Your Costs** arising from a dispute with an **Opponent** where **You** are owed payment under an invoice which has not been settled despite the payment terms having expired.
- 2.7.2 Any **Claim** in relation to clause 2.7.1 shall be subject to **You** following the process below:

Stage 1:

- 2.7.2.1 **You** must log on to www.solutionunderwriting.com.au and complete the template letter with the applicable details and send this letter to the debtor.
- 2.7.2.2 If on expiry of the fourteen (14) calendar days allowed to pay as specified in the template letter **You** have not received payment, **You** must move to Stage 2.

Stage 2:

- 2.7.2.3 **You** must provide full details of the amount due to the **Debt Recovery Professional** via the following email address: legalexpenditures@proclaim.com.au
 - 2.7.2.4 The **Debt Recovery Professional** will then communicate a letter on **Your** behalf advising the debtor that if they do not pay in seven (7) calendar days court proceedings will be issued.
 - 2.7.2.5 If payment is still not forthcoming, the recovery will become a **Claim** under clause 2.1 Head of Cover 1: Contractual Disputes, and the **Debt Recovery Professional** will issue court proceedings on **Your** behalf to seek recovery of the amount due.
- 2.7.3 We will not, and are not, liable to indemnify **You** under this **Head of Cover** for any dispute in relation to a debt sum of less than \$2,500 (two thousand five hundred Australian dollars) for the services under the heading "Stage 2" in clause 2.7.2.4 or for the services specified in clause 2.7.2.5 where the debt sum is less than \$5,000 (five thousand Australian dollars).

3. General Exclusions Applicable to All Heads of Cover

3.1 Cover is excluded under this **Policy** in respect of any **Claim**:

- 3.1.1 arising from outside of the territory of the Commonwealth of Australia;
- 3.1.2 arising from an appeal, unless it is more probable than not that **You** will on appeal obtain a more favourable outcome than the judgement or decision appealed;
- 3.1.3 arising from a dispute between **You**, **Us**, the **Coverholder** and/or **Claims Manager**;
- 3.1.4 arising from a dispute between **You** and any holding, subsidiary or associated corporation (including franchisor/franchisees) or any trust operated by **You**;
- 3.1.5 where **You** have in place other insurance which indemnifies **You** for the same **Claim**, or where **You** are required by **Applicable Law** to have such a policy, whether one is in place or not;
- 3.1.6 in respect of a dispute where **You** are insured under another insurance policy for the liability that is the subject of the dispute;
- 3.1.7 where **We** have suffered prejudice due to **Your** deliberate, intentional or reckless failure to take all reasonable steps to avoid a **Claim** or dispute arising;
- 3.1.8 where **You** have acted with any criminal intent or have otherwise recklessly or through omission committed criminal act(s);

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- 3.1.9 where **You** have breached a term of this **Policy** in relation to that **Claim**, subject to section 54 of *Insurance Contracts Act 1984* (Cth);
- 3.1.10 arising from the following:
- 3.1.10.1 **Construction Services**, subject to the terms in clause 2.1 of the Head of Cover 1: Contractual Disputes;
 - 3.1.10.2 franchise agreements;
 - 3.1.10.3 planning laws or regulations;
 - 3.1.10.4 intellectual property of any kind, including but not limited to patents, copyrights, trademarks, passing off, registered designs and similar (unless directly related to a **Claim** under clause 2.5 Head of Cover 5: Restrictive Covenants);
 - 3.1.10.5 a warranty or guarantee;
 - 3.1.10.6 subsidence, land heave, land slip, mining or quarrying;
 - 3.1.10.7 allegations of defamation of any kind or malicious falsehood;
 - 3.1.10.8 judicial review;
 - 3.1.10.9 worker's compensation.
- 3.1.11 for costs incurred by **You** after **You** fail to accept the advice of the **Appointed Professional** to settle a **Claim**.
- 3.2 Notwithstanding any other provision, clause or term of this **Policy** and/or any endorsement thereof to the contrary, this **Policy** excludes and does not insure any **Claim**, loss, liability, damage, cost, fine, penalty, expense or other sum of any kind whatsoever **Relating To**, whether directly or indirectly and/or regardless of any other cause or event contributing concurrently or in any other sequence thereto, a **Communicable Disease** and/or any fear or threat (whether actual or perceived) thereof or action taken in response to a **Communicable Disease**.
- 3.3 **We** are not liable for any fines, damages, compensation, taxes, penalties or interest which **You** are ordered to or agree to pay.

4. Claims Conditions

- 4.1 In the event of:
- 4.1.1 a **Claim** arising under this **Policy**; or
 - 4.1.2 the receipt by **You** of notice from any **Person** of facts or circumstances that may give rise to a dispute; or
 - 4.1.3 any cause, event, dispute or circumstance which may give rise to a **Claim**,
- You** must, as soon as practicable, give written notice to the **Claims Manager** to the following address: legalexpenses@proclaim.com.au with a courtesy email to solution@solutionunderwriting.com.au. Any delay in reporting the above by **You** may prejudice **Your** position under this **Policy**.
- 4.2 It is a condition to indemnity being provided under this **Policy** that **You** receive formal written confirmation from the **Claims Manager** that **Your Claim** is covered before **You** start incurring **Your Costs** or **Opponent's Costs**. Any costs incurred by **You** before the **Claim** has formally been accepted by the **Claims Manager** are not covered under this **Policy**.
- 4.3 **Claims Made and Notified**
- 4.3.1 This is a "claims made" **Policy**, which means that **You** shall only be indemnified for **Claims** where:
 - 4.3.1.1 **You** first become aware of cause, event, dispute or circumstance giving rise to the **Claim** during the **Policy Period**; and
 - 4.3.1.2 **You** first notify the **Claim** to the **Claims Manager** during the **Policy Period**.
- 4.4 Upon accepting the **Claim**, the **Claims Manager** will engage an **Appointed Professional** on **Your** behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate throughout the course of the **Claim**.

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- 4.5 **You** must authorise and instruct the **Appointed Professional** to comply fully with the instructions and directions of the **Claims Manager** at all times throughout the duration of the **Claim**.
 - 4.6 **You** must comply promptly with all requests for information or other forms of assistance made by either the **Claims Manager** or **Appointed Professional** which is in **Your** power to provide in connection with the investigation, defence or settlement of any **Claim** or investigation of any circumstances which may give rise to a **Claim** in respect of which indemnity is sought under this **Policy** including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
 - 4.7 **You** must where possible take all reasonable and necessary steps to recover any costs paid by **Us** and recoverable by **You** from other **Persons** and have these costs paid directly to **Us**.
 - 4.8 **You** must advise the **Claims Manager** in writing immediately if **You** receive an offer to settle or compromise a **Claim** and must not admit liability for, settle or make or promise any payment in respect of any **Claim**, circumstance or event which is likely to be the subject of indemnity under this **Policy** without the prior written approval of the **Claims Manager**.
 - 4.9 **We** shall be entitled, if **We** so desire, to take over and conduct in **Your** name the defence or settlement of any **Claim**, or to prosecute in **Your** name for **Our** benefit and at **Our** expense, any **Claim**.

5. Requirement for Reasonable Prospects of Success

- 5.1 **We** will not, and are not liable to indemnify **You** for **Claims** under this **Policy**, unless:
 - 5.1.1 the action taken by **You** in pursuing or defending the **Claim** is reasonable and proportionate with regard to the costs to be expended and the benefit **You** will obtain, and there must not be a more appropriate manner in which to protect **Your** interests; and
 - 5.1.2 the dispute has **Reasonable Prospects**; and
 - 5.1.3 it is more likely than not that **Your** version of events relevant to the dispute will be accepted by a **Court or Tribunal**.
- 5.2 Having **Reasonable Prospects** is an ongoing requirement for **Our** liability for a **Claim** and if during a dispute or where a **Claim** no longer has **Reasonable Prospects**, **We** will not, and shall not be liable to indemnify **You** under the **Heads of Cover** for costs where there are no **Reasonable Prospects**. If **You** choose to continue the defence or pursuit of a dispute or case where there are no **Reasonable Prospects** all costs and expenses incurred by **You** are at **Your** own cost, but should **You** ultimately achieve a **Positive Outcome** **We** will reimburse **You** for any costs or disbursements **You** fail to recover from **Your Opponent**.
- 5.3 The **Claims Manager** will provide **You** with written reasons if it decides that the **Claim** does not have **Reasonable Prospects**. If **You** disagree with the **Claims Manager** over whether a **Claim** has **Reasonable Prospects** or not, **You** can either:
 - 5.3.1 at **Your** own expense seek an opinion from another legal practitioner from a selection of 3 legal practitioners nominated by the **Claims Manager**. If this opinion is contrary to the **Claims Manager's** view, **We** will reimburse **You** for the cost of the opinion (subject to **Policy Limits**) and **Your Claim** shall be covered from that point subject to the terms and conditions of this **Policy** and that legal practitioner will be the **Appointed Professional** who will continue to act for **You**; or
 - 5.3.2 access **Our** complaints process outlined in this document.

6. Misrepresentation and Non-Disclosure

- 6.1 If **You**:
 - 6.1.1 fail to disclose any matter which **You** are under a duty to disclose by **Applicable Law** to **Us**; or
 - 6.1.2 make a misrepresentation to **Us** prior to the inception date of this **Policy**,to the extent such actions or inactions are:
 - 6.1.2.1 fraudulent, without prejudice to the other rights **We** may have, however arising, under this **Policy**, **We** shall have the right to avoid this **Policy**;
 - 6.1.2.2 non-fraudulent, if **We** would have entered into this **Policy** on different terms (including, but not limited to, the premium payable) having been aware of such actions or inactions, **Our** liability in respect of any **Claim** shall be reduced to what it would have been had the concealment, misrepresentation or non-disclosure not taken place.

7. Fraud and Dishonest Conduct

If any **Claim** is in any respect fraudulent or if any fraudulent means or devices is used by **You** or anyone acting on **Your** behalf to obtain any benefit under this **Policy**, or if any destruction or damage is occasioned by **Your** wilful act or with **Your** connivance, **We**, without prejudice to any other right(s) **We** might have under this **Policy**, shall, subject to the provisions of the *Insurance Contracts Act 1984* (Cth), be entitled to refuse to pay such **Claim**.

8. Cancellation Rights

- 8.1 We may cancel this **Policy** in accordance with Sections 59 and 60 of the *Insurance Contracts Act 1984* (Cth) by giving the appropriate notice to **You**.
- 8.2 This **Policy** may be cancelled by **You** giving written notice to **Us** at any time.
- 8.3 Upon cancellation of the **Policy** by **You** a refund of premium will be allowed, pro-rata for the unexpired portion of the **Policy Period** less an administration fee equal to 10% (ten percent) of the total premium and less any taxes and duties paid for the **Policy** that **We** cannot recover. There will be no pro-rata refund of premium if there has been any notification of a circumstance or **Claim**.
- 8.4 It is a condition of this **Policy** that You pay the premium **We** charge **You** and **We** may take steps to cancel the **Policy** for non-payment of the premium.

9. Insolvency

If at any point during the **Policy Period** or duration of a **Claim You** file for bankruptcy; file a winding up petition; go into liquidation or voluntary administration; enter into any arrangement with creditors; or have a receiver or controller appointed (each an “Insolvency Act”), **We** will not, and shall not, be liable under the **Heads of Cover** after an Insolvency Act.

10. Terrorism / War / Contamination Exclusion

- 10.1 This **Policy** excludes cover for losses as a result of terrorism.
- 10.2 In the event that damage to property occurs and the cause of the damage is declared a terrorist incident by the responsible Government Minister, then **You** may be afforded protection within the limits of indemnity of this **Policy** by virtue of the *Terrorism Insurance Act 2003*. The operation of this Act may also serve to reduce the settlement of your loss to a percentage of the otherwise recoverable loss. In the event that the settlement is reduced then this will be at the direction of the Government Minister.
- 10.3 A more detailed explanation of the operation of the *Terrorism Insurance Act 2003* (Cth) can be obtained at www.arpc.gov.au.
- 10.4 This **Policy** excludes loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other sequence to the loss:
 - 10.4.1 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, conspiracy, rebellion, revolution, insurrection, mutiny, military or usurped power; or
 - 10.4.2 confiscation or nationalisation, or requisition or destruction of or damage to property by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority.
- 10.5 Furthermore any loss, destruction or damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to clause 10.4.1 or clause 10.4.2 is also excluded from this **Policy**.

11. Electronic Data Exclusion

- 11.1 Notwithstanding any provision to the contrary within this **Policy** or any endorsement thereto, it is understood and agreed that this **Policy** does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of **Electronic Data** from any cause whatsoever (including but not limited to **Computer Virus**) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any sequence to the loss.

12. Strikes, Riots or Civil Commotion Exclusion

12.1 Notwithstanding anything contained herein to the contrary, **We** are not liable for any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by or arising from riot, civil commotion, strikers, locked out workers, or persons in labour disturbances.

13. Biological or Chemical Materials Exclusion

13.1 It is agreed that this **Insurance** excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

14. Cyber Risks Exclusion

14.1 This **Policy** does not cover **Your Costs** and **Your Opponent's Costs** for, incurred as a result of, or arising out of a **Cyber Act** or **Cyber Incident**.

14.2 Definitions

14.2.1 **Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.

14.2.2 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.

14.2.3 **Cyber Incident** means:

- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.

15. Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause

15.1 This **Policy** does not cover

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss

(b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

16. Terrorism and Cyclone Insurance Act 2003

16.1 The Underwriters have treated this Insurance (or part of it) as an Insurance to which the *Terrorism and Cyclone Insurance Act 2003* (TACIA) applies.

16.2 TACIA 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 TACIA.

16.3 Any coverage established by TACIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in TACIA. 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".

16.4 All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

16.5 If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of TACIA due to the application of a “reduction percentage” as defined in TACIA which results in a cap on the Underwriter’s liability for payment for “eligible terrorism losses”.

17. General Conditions

17.1 Confidentiality

You will not, without **Our** prior written consent, disclose the existence of this **Policy** to any person or party outside **Your** organisation except insofar as is required in order to comply with the terms of this **Policy** or by **Applicable Law**.

17.2 Subrogation

In the event of any payment under this **Policy**, **We** will be subrogated to the extent of such payment to all **Your** rights of recovery. In such case **You** will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable **Us** effectively to bring suit in **Your** name.

17.3 How Goods and Services Tax (GST) Affects Claim Payments

17.3.1 Where **We** make a payment under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **You** are, or will be, or would have been entitled to under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, in relation to that acquisition, whether or not that acquisition is actually made.

17.3.2 Where **We** make a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that **You** would have been entitled to under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* had the payment been applied to acquire such goods, services or other supply.

17.4 Sanction Limitation and Exclusion

We shall not be deemed to provide cover and **We** shall not be liable to pay any **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

17.5 Amendments

Any amendment of a clause, condition, term or provision of this **Policy** must be set out in writing and agreed by **You** and **Us**.

17.6 Third Party Beneficiary Rights

We and **You** do not intend to create in any other person the status of a third-party beneficiary, and this **Policy** will not be construed so as to create such status.

17.7 Assignment

The provisions of this **Policy** shall inure to the benefit of and be binding upon **You** and neither this **Policy** nor any right, authority or obligation arising under it may be assigned, transferred or otherwise disposed of, in whole or in part, by **You** without **Our** prior written consent.

17.8 Notices

Any notice, including notice of termination or breach of this **Policy** or any statutory notice or any notice relating to **Applicable Law** required or permitted to be given to **Us** shall be in writing and shall be delivered personally or sent by first class post pre-paid recorded delivery (and air-mail if overseas) or provided by email and addressed as follows:

Solution Underwriting Agency Pty Ltd
Level 5, 289 Flinders Lane
Melbourne VIC 3000
Email: solution@solutionunderwriting.com.au

17.9 Waiver

No provision of this **Policy** shall be deemed waived by a course of conduct. Any waiver must be in writing signed by **Us** and **You** and stating specifically that it was intended to modify a right or provision under the **Policy**. No waiver of any provision of this **Policy** shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

17.10 Severability

If any provision of this **Policy** is, for any reason, held to be invalid, prohibited, or otherwise unenforceable, the other provisions of this **Policy** shall remain enforceable and the invalid or unenforceable provision shall be deemed modified so that they are valid and enforceable to the maximum extent permitted by **Applicable Law**.

17.11 Governing Law and Jurisdiction

17.11.1 This **Policy** and the **Schedule** will be interpreted in accordance with the law of the Commonwealth of Australia. This **Policy** and the **Schedule** shall be read together as the contract of insurance and any word or expression to which a specific meaning has been given in any part of this **Policy** or the **Schedule** shall bear such specific meaning wherever it may appear.

17.11.2 In the event of a dispute arising under this **Policy**, **We**, at the request of **You**, will submit to the jurisdiction of any competent **Court** in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such **Court**.

solution.

Next Level
Underwriting™

Issued By Solution Underwriting
Agency Pty Ltd

Level 5, 289 Flinders Lane
Melbourne, VIC 3000

P. 03 9654 6100
solution@solutionunderwriting.com.au

ABN 68 139 214 323 AFSL 407780

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solutionunderwriting.com.au