



Professional Indemnity Policy for Project People

Underwritten by Guild Insurance Limited

ACERTA 

About Acerta

Acerta is the name of Guild Insurance Limited's intermediary division. Acerta partners with insurance intermediaries by complementing Our products with an experienced team committed to providing prompt personalised service that delivers certainty to Our customers.

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Introduction

Applying for Cover with Us

Prior to this Policy coming into effect You have provided Us or your intermediary with information in support of Your request for Cover with Us. The information that You have provided to Us is referred to as Your Application for this Policy.

You must ensure the information provided to Us in Your Application is accurate and that You have complied with Your duty of disclosure. We have relied on Your Application to decide whether to issue this Policy and, if We do so or have, the terms and conditions upon which We do/did so.

When You have paid the Premium, or agreed to pay the Premium, We will issue You with a Schedule, and this policy-booklet. If payment of the Premium as stated in the Schedule is not made then there is no Cover provided under this Policy.

Complaints and Disputes Resolution

We have a formal complaints and dispute resolution process that is fair, efficient and accessible to all Our clients. This service is free of charge to You.

If You do not agree with any decision We make in relation to Your insurance Policy please contact Your insurance intermediary or Us indicating the nature of the complaint.

We will then resolve or attempt to resolve Your complaint or refer it to Our internal Dispute Resolution Manager.

General Insurance Code of Practice

We are a signatory to and fully support the General Insurance Code of Practice. The objectives of this Code are to commit insurers and the professionals they rely upon to higher standards of customer service.

Please contact Us if You or Your insurance intermediary would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at www.codeofpractice.com.au.

Privacy

We are committed to complying with privacy laws and protecting Your personal information. By entering into a contract with Us, You agree to:

- the collection, use and disclosure of Your personal information to evaluate, effect, manage and

administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;

- the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;
- the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy or financial product;
- the collection from, and/or disclosure of, Your personal information to a third party which may include Your employer and Our service providers (including but not limited to Your insurance intermediary, other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your insurance policy or a claim under this Policy;
- the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- the disclosure of Your personal information to a person, regulatory bodies or other entities if We are required or permitted to do so by law.

If You do not provide the requested personal information We may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

We will ensure that Your personal information is accurate, up-to-date and complete. You or Your insurance intermediary may access personal information We hold about You by contacting Us.

If You or Your insurance intermediary would like to make a complaint about how We have handled Your personal information please contact Us and speak to one of Our staff who will assist You.

Our privacy policy contains further information on access, correction and complaints handling procedures and can be accessed online at www.acerta.com.au/product-centre/tools/links. Alternatively, please contact Us and We will arrange for a copy of the privacy policy to be provided to You.

Important Information

The following important information applies to this Policy. Please read this information carefully and if You are in any doubt as to how this information may affect You please contact Your insurance intermediary or Us and ask for an explanation.

Alteration of Risk

This Policy Covers Your Professional Services as You have represented these to Us. It is important for You to advise Us or your intermediary immediately of any changes to Your Professional Services that may result in an increased risk of liability to third parties.

For example, You should advise Us when there is a change in:

- the nature of Your Professional Services;
- Your address or the location of risk from where You conduct Your Professional Services;
- Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration status;
- Your financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- any other changes whereby the risk Covered under this Policy is increased.

Duty of Disclosure

Before You enter into a contract of general insurance with Us, You have a duty under the Insurance Contracts Act 1984 to disclose to Us every matter that You know, or could reasonably be expected to know, is relevant to Our decision whether to accept the risk of insurance and if so, on what terms.

You have the same duty to disclose those matters to Us before You renew, extend, vary or reinstate a contract of general insurance.

Your duty does not require disclosure of any matter:

- that diminishes the risk to be undertaken by Us;
- that is of common knowledge;
- that We know or, in the ordinary course of Our business, ought to know;

- as to which compliance with Your duty is waived by Us.

Non-disclosure – Failure to Comply with Your Duty of Disclosure

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under this contract in respect of a claim under this Policy or We may cancel this contract.

If Your non-disclosure is fraudulent, We may also have the option of avoiding this contract from its beginning.

Excess

An Excess may apply to Your claim under this Policy. The amount of any Excess applicable to this Policy is stated in the Schedule or in this policy-booklet.

GST and Claim Payments to You

In the event of a claim under this Policy:

- if You are not registered for GST We will reimburse You the GST component in addition to any other amount We pay You; or
- if You are registered for GST You will need to claim the GST component from the Australian Taxation Office. Where You cannot claim the GST component in full We will reimburse You the unclaimed GST component in addition to the amount We pay You.

Your Policy contains claims conditions in respect of:

- GST and claim payments for compensation;
- GST and claim payments for legal and other costs; and
- Our limitation for GST payment.

You should read the claims conditions contained in Your Policy to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

Limitations of Cover

Claims Made and Notified Cover

This Policy operates on a 'claims made' basis of Cover.

A 'claims made' basis of Cover means that We only Cover Claims first made against You during the Period of Cover. You must advise Us during the Period of Cover of any Claim first made against You by another party. If You do not notify Us during the Period of Cover You may not be Covered under this Policy.

You should refer to Your policy-booklet for the full description of the 'claims made' Cover provided under this Policy.

This Policy does not provide Cover in relation to:

- acts, errors, omissions or conduct occurring or committed by You prior to the Retroactive Date of this Policy Cover as stated in the Schedule (if such a date is actually specified in the Schedule);
- a Claim made after the expiry of the Period of Cover even though the act, error, omission or conduct giving rise to the Claim may have occurred during the Period of Cover;
- Claims made, threatened or intimated against You prior to the commencement of the Period of Cover;
- facts or circumstances of which You first became aware prior to the Period of Cover and which You knew or ought reasonably to have known had the potential to give rise to a Claim or other claim Covered under this Policy; or
- any Claim, fact or circumstance that may give rise to a Claim or Inquiry disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

Where You have given notice in writing to Us of any facts or circumstances that might give rise to a Claim against You as soon as reasonably practicable after You become aware of those facts or circumstances but before the expiry of the Period of Cover You may have rights under Section 40(3) of the Insurance

Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts or circumstances notwithstanding that the Claim is made after the expiry of the Period of Cover.

Any such rights arise under the Insurance Contracts Act 1984 legislation only. The terms and effect of this Policy are that You are not Covered for Claims made against You after the expiry of the Period of Cover.

Limits of Liability

Cover under this Policy is limited to the Limits of Liability stated in the Schedule unless otherwise provided by this Policy. The Limits of Liability stated in the Schedule represent the full extent of Our maximum liability to You in relation to all claims under this Policy.

Premiums

Your Premium will be subject to the inclusion of:

- GST in accordance with relevant taxation legislation; and
- stamp duty as imposed by the relevant legislation of each Australian State or Territory.

Waiver of Rights and Subrogation

Waiver of Rights

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

Subrogation - Preventing Our Right to Recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any liability which is Covered under this Policy We will not Cover You under this Policy for that liability.

Your Policy

This policy-booklet together with the Schedule We provide to You and any Endorsement form Your insurance Policy with Us.

Our Agreement with You

We agree to provide You with the Cover set out in this Policy which You have selected and which is stated in the Schedule.

The Cover is in force for the Period of Cover stated in the Schedule.

You have paid or agreed to pay Us the Premium set out in the Schedule for the Period of Cover.

Definitions, Exclusions, General Conditions and Claims Conditions

The following:

- a. definitions;
- b. exclusions;
- c. general conditions; and
- d. claims conditions;

will apply to this Policy.

Grammatical Forms

A number of the defined words or terms in this Policy have different grammatical forms. The meaning given to them in their definition applies specifically to one of their grammatical forms but their other grammatical forms have a corresponding meaning.

Headings

This policy-booklet contains headings which are used for reference only and must not be used when interpreting this Policy.

Singular and Plural Words

In this Policy, a reference to the singular includes the plural and vice versa.

Your Cover

What is Covered

Professional Indemnity

We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the provision of the Professional Services where such Claim is first made against You and notified to Us during the Period of Cover.

The Cover provided includes but is not limited to Your civil liability arising from any Claim as a result of any of the following in the provision of the Professional Services:

Your actual or alleged unintentional:

- a. defamation, libel or slander;
- b. unlawful discrimination;
- c. breach of Australian Consumer Law under the Competition and Consumer Act 2010 (Cth) and other legislation enacted for the protection of consumers in any State or Territory;
- d. infringement of any copyright, trademark, registered design or patent;
- e. breach of any duty of confidentiality arising at law; and
- f. breach of any privacy legislation in Australia or of any other applicable legislation in Australia in respect of privacy of personal information.

Defence Costs

Where We agree to provide Cover to You for a Claim Covered under this Policy We will also pay Defence Costs.

Limit of Liability

Our maximum liability under this Policy in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability any one Claim or where applicable to the sub-limit amount in respect of any specific Cover under this Policy; and
- b. to the extent that this Policy Covers more than one entity Our total liability under this Policy during the Period of Cover will not exceed the Limit of Liability; and

all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Policy.

The Limit of Liability amount in respect of clauses a), b) and c) above is inclusive of Defence Costs and any amounts payable under any and all of the additional benefits under this Policy or of any other extension of Cover under this Policy.

We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount in each of clause a), b) or c) above.

The Limit of Liability amount for each of clause a), b) or c) above will not be reduced by the Excess amount payable by You.

Multiple Claims

All acts, errors, omissions or conduct which are in any way related to or originate from one source or original cause shall jointly constitute a single act, error, omission or conduct. Where a single act, error, omission or conduct or causally connected or interrelated acts, errors, omissions or conduct result in more than one Claim or a series of Claims all such Claims shall jointly constitute one Claim and the Limit of Liability any one Claim and one Excess shall apply to that Claim.

Additional Benefits

We will, subject to all of the provisions of this Policy, Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

Claim Preparation Costs

When We agree to Cover You for a Claim. We will also Cover You for Your necessary and reasonable out of pocket expenses, not including Defence Costs, incurred by You at Our request in the preparation of Your defence to such Claim.

Our maximum liability under this additional benefit for any one Claim during the Period of Cover and for all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$25,000 unless otherwise stated in the Schedule.

No Excess will apply to this additional benefit.

Continuous Cover

Notwithstanding exclusion 'Known Claims or Known Circumstances' We will Cover You for Your civil liability in respect of a Claim first made against You during the Period of Cover where such Claim arises from a fact or circumstance:

- a. You first became aware of prior to the Period of Cover and You knew or ought to have reasonably known might give rise to a Claim; and
- b. You did not notify Us of such fact or circumstance under the Policy in force with Us at the time when You first became aware of such fact or circumstance:

Provided that:

- i. there is an absence of fraud in Your not notifying Us of such fact or circumstance;
- ii. We have continued to be Your professional indemnity insurer without interruption between the date when the fact or circumstance could have been first notified to Us and the date the Claim was actually notified to Us;
- iii. other than the Limit of Liability amount Cover is subject to all of the provisions and Excess under this Policy;
- iv. Cover is limited to the Limit of Liability amount of the policy for the period of cover in force at the time when You could have first notified Us of such fact or circumstance; and
- v. We may reduce Our liability under this Policy to the extent of any prejudice suffered by Us due to Your not notifying Us of such fact or circumstance when You first became aware of it.

Court Attendance Costs

When We agree to Cover You for a Claim under this Policy and if any of Your Principals, partners,

directors or Employees are legally required to attend court as a witness, or where We require such attendance, in respect of such a Claim We will reimburse You that amount incurred by You in compensating any such person for any out of pocket expenses incurred by them as a result of their court attendance.

Our maximum liability under this additional benefit will be limited to an amount not exceeding:

- a. \$500 per day for any one Claim in respect of each Principal, partner or director;
- b. \$250 per day for any one Claim in respect of each Employee; and
- c. \$25,000 for all Claims in the aggregate during any one Period of Cover;

unless otherwise stated in the Schedule:

Provided that:

- i. You must provide Us with invoices and accounts in support of Your payment of such out of pocket expenses incurred as a result of attending court; and
- ii. We will not reimburse You for any loss of earnings, salary or other lost remuneration or associated expenses.

No Excess will apply to this additional benefit.

Fraud and Dishonesty

Notwithstanding exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts', We will Cover You for Your civil liability in respect of any Claim as a result of any fraudulent, dishonest, criminal or malicious act, error, omission or conduct in the provision of the Professional Services where the Claim was first made against You and notified to Us during the Period of Cover:

Provided that:

We will not Cover:

- i. any of You who committed or condoned the act, error, omission or conduct excluded under exclusion Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts; or

- ii. any Claim relating to
 - Money or electronic funds or records of electronic funds; or
 - the unauthorised or illegal transfer of Money, land or other property by any means.

Free Telephone Legal Advice

You will be entitled during the Period of Cover to free telephone legal consultation up to a maximum of two (2) hours duration with Our nominated legal advisors for the purposes of obtaining legal advice in respect of Cover provided for 'Employment – Related Civil Liability Issues' as defined in that additional benefit:

Provided that:

- a. You first obtain Our written consent to do so;
- b. We will not Cover Your Employee or voluntary worker obtaining advice in respect of his or her own rights against You; and
- c. any unexpired time entitlement is non-cumulative and cannot be used in a subsequent Period of Cover.

For the purposes of this additional benefit:

'Employment – Related Civil Liability Issues' means any issues arising out of a contract of employment or an incident in employment which has the potential to lead or has led to a Claim against You for civil liability by an Employee or voluntary worker of Yours including Claims alleging wrongful dismissal, discrimination, sexual harassment or breach of an industrial award.

No Excess will apply to this additional benefit.

Good Samaritan Acts

We will Cover You for Your civil liability arising from any Claim as a result of Good Samaritan Acts where such Claim is:

- a. first made against You during the Period of Cover and notified to Us during the Period of Cover; and

- b. You were not acting under the terms of a contract for service or apprenticeship with another employer, entity or practice at the time of the Good Samaritan Acts.

Inquiries and Proceedings

We will Cover You for Your reasonable legal costs incurred by Us or by You with Our prior written consent in Your legal representation at any Inquiry:

Provided that:

- i. notice of the Inquiry is first served on You and notified to Us during the Period of Cover; and
- ii. You are legally required to respond to and/or attend the Inquiry.

Provided further that:

We will not Cover You under this additional benefit for an act, error, omission or conduct arising from Your provision of the Professional Services when You were unregistered, unauthorised, ineligible, not accredited or disqualified to practise or to provide the Professional Services at the time of such act, error or omission or conduct.

Our maximum liability in respect of any one Inquiry and in the aggregate for all Inquiries Covered under this additional benefit during the Period of Cover will be limited to the amount stated in the Schedule for Inquiries and Proceedings.

An Excess of \$1,000 costs inclusive will apply to each and every Inquiry under this additional benefit.

Joint Venture Liability

We will Cover You for Your civil liability arising from any Claim as a result of a breach of professional duty by You in the provision of the Professional Services during Your participation in a joint venture:

Provided that:

- i. such Claim is first made against You and notified to Us during the Period of Cover; and
- ii. We will not Cover any of the other joint venture parties.

Loss of Documents

We will Cover You for Your civil liability arising from any Claim for the loss of or damage to Business Documents not owned by You but which are in Your custody or control in the ordinary course of Your Professional Services and for which Business Documents You are legally responsible:

Provided that:

- i. the loss or damage occurred and was first discovered by You during the Period of Cover;
- ii. the loss or damage occurred within the territorial limits of Australia;
- iii. You notified Us within thirty (30) days from first discovery of the loss of or damage to such Business Documents and prior to the expiry of the Period of Cover;
- iv. You must provide Us with invoices and accounts in support of the costs and expenses incurred by You in replacing or restoring such Business Documents for Our consideration and approval; and
- v. any Business Document held in electronic format is duplicated via daily back up of material capable of restoring any lost or damaged document to its original status:

Provided further that:

We will not Cover You for:

- vi. loss of or damage to Business Documents arising from a computer virus or the theft, corruption or erasure of any data by a former Insured;
- vii. loss of or damage to Business Documents brought about by wear and tear, vermin, mould or mildew or any other gradual deterioration; or
- viii. consequential or indirect loss of any kind.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$250,000 unless otherwise stated in the Schedule.

An Excess of \$1,000 costs inclusive will apply to this additional benefit.

New Subsidiaries

We will Cover any Subsidiary Company acquired or created by You during the Period of Cover for a period of up to thirty (30) days only from the date of such acquisition but in no circumstance shall Cover under this additional benefit extend beyond the expiry date of the Period of Cover:

Provided that:

- i. We are given written notification within thirty (30) days of the acquisition or creation; and
- ii. the Cover provided under this additional benefit will apply only in respect of Claims arising from an act, error, omission or conduct occurring on or after the date of creation or acquisition of the Subsidiary Company:

Provided further that:

We may at Our absolute discretion offer to extend Cover to such Subsidiary Company in excess of thirty (30) days but not beyond the expiry date of the Period of Cover. In order for Cover for such Subsidiary Company to be so extended You must provide Us with all additional information We may further require in order for Us to exercise Our discretion whether or not to extend Cover and pay any additional Premium We may require.

Prior Business

Where specifically stated in the Schedule as Covered under this Policy We will Cover the Principals of the legal entity named in the Schedule as the Insured for their civil liability arising from any Claim as a result of a breach of professional duty by them in the provision of professional services in a prior professional practice:

Provided that:

- i. these professional services are the same as the Professional Services stated in the Schedule; and
- ii. such Claim is first made against them and notified to Us during the Period of Cover.

Public Relations

We will Cover You for Your Public Relations Costs necessarily and reasonably incurred by You for the sole purpose of protecting or restoring the

professional reputation of the Insured stated in the Schedule and which has been impaired as a direct result of a Claim Covered under this Policy:

Provided that:

- i. You first became aware of the actual damage to the Insured's professional reputation as a result of such Claim during the Period of Cover; and
- ii. You first notify Us of the full particulars of such damage to the Insured's professional reputation within thirty (30) days from when You first became aware of the damage and prior to the expiry of the Period of Cover, whichever is the earlier.

Our maximum liability under this additional benefit for any one Claim and in the aggregate for all Claims Covered under this additional benefit during the Period of Cover will be limited to an amount not exceeding \$50,000 unless otherwise stated in the Schedule.

An Excess of \$1,000 costs inclusive will apply to this additional benefit.

Reinstatement of Limit of Liability

Where the Limit of Liability amount is exhausted partially or totally by the payment of a Claim or Claims Covered under this Policy We will reinstate the Limit of Liability amount up to the maximum aggregate Limit of Liability during the Period of Cover to Cover You for any subsequent Claim or Claims Covered under this Policy:

Provided that:

- i. We will only reinstate the Limit of Liability amount for any such subsequent Claim or Claims arising from acts, errors, omissions or conduct unrelated to any Claim or Claims already Covered (whether in whole or in part) within the original Limit of Liability amount;
- ii. Our aggregate liability for all Claims Covered under this Policy will not exceed the Limit of Liability amount in the Aggregate;
- iii. notwithstanding the aggregate Limit of Liability amount available Our maximum liability in

respect of any one Claim or Claims arising from the same or interrelated acts, errors, omissions or conduct will be limited to an amount not exceeding the Limit of Liability inclusive of any additional benefits or other amounts Covered and Defence Costs; and

- iv. this additional benefit will not apply to the extent that there is other insurance cover available to You in excess of the original Limit of Liability amount under this Policy.

Run Off Cover

We will Cover You where You are subject to a merger, takeover, sale, winding-up or other permanent cessation of the Professional Services during the Period of Cover provided that Cover shall only continue up to the expiry of the Period of Cover and is only in respect of Claims arising from an act, error, omission or conduct occurring prior to the date of Your merger, takeover, sale or winding up.

Statutory Liability

Notwithstanding general exclusions:

- > Employer's Liability;
- > Fines and Penalties or Liquidated or Punitive or Exemplary or Aggravated Damages; and
- > Pollution and/or Contamination;

We will Cover You:

- a. for legal costs incurred in defending legal proceedings issued against You for a breach of Australian workplace health and safety law or environment law in Your provision of the Professional Services where notice of such legal proceedings is first served on You and notified to Us during the Period of Cover;
- b. to the extent permitted at law for any pecuniary penalties or compensatory civil penalties imposed on You arising from any legal proceedings for a breach of Australian workplace health and safety law or environment law in Your provision of the Professional Services and where such legal proceedings are first served on You and notified to Us during the Period of Cover:

Provided that:

the act, error, omission or conduct forming the subject of the legal proceedings and the breach:

- i. occurred on or after the Retroactive Date; and
- ii. did not arise from gross negligence.

Our maximum liability under this additional benefit in respect of any one legal proceeding, civil penalty or pecuniary penalty and all legal proceedings, civil penalties and pecuniary penalties in the aggregate will be limited to an amount not exceeding \$50,000 for any one Period of Cover unless otherwise stated in the Schedule.

Vicarious Liability for Consultants, Agents and Contractors

We will Cover You for Your civil liability arising from a Claim as a result of Your vicarious liability for the acts, errors, omissions or conduct of Your consultants, agents or contractors whilst performing the Professional Services for or on Your behalf and where such Claim is first made against You and notified to Us during the Period of Cover:

Provided that:

We will not Cover any consultant, agent or contractor under this additional benefit for their own liability in respect of a Claim.

Exclusions

The following exclusions apply to this Policy. Please read them carefully.

This Policy does not Cover and We will not be liable for any claim under this Policy for, directly or indirectly arising out of or in any way connected with:

Aircraft

Your ownership, maintenance, service, operation, use or legal control of an Aircraft or Aircraft landing area.

Aircraft landing area includes any land, building or structure in an area where Aircraft take off or land or are housed, maintained, operated or refuelled.

Asbestos

the existence or presence of asbestos in whatever form or quantity.

Bankruptcy or Insolvency and the like, Business Sold or Death

Your Business or You or any other person or party entitled to Cover under this Policy or Your consultants, contractors or agents being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound up.

Contractual Liability

liability assumed:

- a. under any contract, warranty, guarantee, indemnity or agreement unless such liability would have attached to You regardless of the existence of the contract, warranty, guarantee, indemnity or agreement; and/or
- b. which is outside the normal course of Your Professional Services.

Directors and Officers

Your acting in the capacity of a director or officer of any legal entity, corporation or other incorporated body.

Employer's Liability

- a. bodily injury to any Employee arising out of or sustained in the course of their employment with You;

- b. bodily injury to any individual who is deemed to be Your Employee pursuant to any workers' compensation legislation or similar law or who is deemed to be Your Employee at common law;
- c. bodily injury to an Employee for which You are indemnified or entitled to be indemnified under any policy of insurance or self-insurance licence arrangement required to be taken out pursuant to any workers' compensation legislation or accident compensation legislation, whether or not You are a party to such policy;
- d. liability imposed by the provisions of any workers' compensation legislation; or
- e. liability imposed by the provisions of any industrial award, agreement or determination.

Employment Practices Liability

any wrongful or unfair dismissal, discrimination, harassment of any kind, misleading or deceptive representation, misstatement, denial of natural justice, defamation, demotion or failure to promote or hire, relating to or in respect of:

- a. the employment; or
- b. the prospective employment;

of any person by You:

Provided that:

this exclusion shall not apply to the additional benefit Free Telephone Legal Advice.

Faulty Workmanship

the cost of performing, re-performing, correcting, improving, rectifying or completing any work undertaken by You or on Your behalf.

Fines and Penalties or Liquidated or Punitive or Exemplary or Aggravated Damages

- a. fines and/or penalties;
- b. liquidated damages, punitive, exemplary or aggravated damages or additional damages resulting from the multiplication of compensatory damages; or

- c. non-compensatory damages or taxes;

other than as specifically Covered under additional benefit Statutory Liability.

Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts

any actual or alleged:

- a. dishonest, fraudulent, criminal or malicious act or conduct;
- b. wilful act or intentional conduct intended to cause loss, damage, harm or liability or committed with a reckless disregard for the consequences thereof; or
- c. wilful or intentional breach of any regulation, statute or other law, contract or duty;

committed by:

- You or Your Employees; or
- any person acting with Your knowledge, consent or connivance.

Hovercraft

Your ownership, maintenance, service, operation, use or legal control of a Hovercraft or Hovercraft landing area.

Hovercraft landing area includes any land, building or structure in an area where Hovercraft take off or land or are housed, maintained or operated.

Infectious and/or Transmissible Diseases

- a. Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD); or
- b. the existence or suspected existence of any infectious disease where an infectious disease is defined as Highly Pathogenic Avian Influenza or any other diseases which are deemed to be quarantinable diseases under the Australian Quarantine Act (Cth) 1908 and subsequent amendments irrespective of whether it was discovered on Your business premises or elsewhere.

Intoxicants or Drugs

any act, error, omission or conduct caused by You or Your Employee acting on Your behalf while under the influence of alcohol or intoxicants or drugs:

Provided that:

this exclusion shall not apply where there was no knowledge or reasonable suspicion by You in the circumstances of such intoxication or drug use by any other of You or Your Employee.

Jurisdiction and Territorial Limits

- a. any event or any actual or alleged act, error, omission or conduct happening in the United States of America or Canada;
- b. any Claim, action or matter brought in a court outside of Australia;
- c. any Claim, action or matter brought in a court within Australia to enforce a judgment handed down by a court outside of Australia; or
- d. any Claim, action or matter where You have agreed to submit to the legal jurisdiction of a court outside of Australia:

Provided that:

clause a) shall not apply to the Cover provided in respect of additional benefit Good Samaritans Acts.

Known Claims or Known Circumstances

- a. any Claim or notice of Inquiry first made or served on You or threatened or intimated against You or others Covered under this Policy prior to the Period of Cover;
- b. any fact or circumstance of which You or others Covered under this Policy were aware, or which a reasonable person in Your or their position should have been aware, prior to the Period of Cover and which You or they knew or ought to reasonably have known may give rise to a Claim or Inquiry; or
- c. any Claim, Inquiry, fact or circumstance that may give rise to a Claim or Inquiry disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

Nuclear Material

- a. ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous properties or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c. any weapon or device employing atomic or nuclear fission and/or fusion or other reaction or radioactive force or matter;
- d. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter; or
- e. nuclear weapons material:

Provided that:

this exclusion will not apply to any claim under this Policy arising from the use of radioisotopes when used away from the place where such are made or produced and used solely for the purpose of medical, industrial or scientific services in the conduct of Your Professional Services.

Occupier's and Owner's Liability

Your occupation, ownership, lease or management of any land, building, structure or other real or tangible property.

Pollution and/or Contamination

- a. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any Pollutant or harmful substance into or upon any property, land, watercourse, body of water or the atmosphere;
- b. costs and expenses incurred in the prevention, removal, nullifying or clean-up of contamination or pollution or harmful substance caused by Pollutants into or upon any property, land, watercourse, body of water or the atmosphere; or

- c. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any contamination, Pollutant or harmful substance occurring in the United States of America or Canada or any other territory coming within or subject to the jurisdiction of the courts of the United States of America or Canada.

Products

any Claim arising from the manufacture, preparation, modification, repair, sale, supply, maintenance, wholesale, distribution or treatment by You of any goods or products.

Products Recall

the recall or withdrawal of any goods or products manufactured, sold, supplied or distributed by You.

Professional Registration Breach

any Professional Services provided by You at a time:

- a. when You were not registered to practise the Professional Services and such registration is required under any legislation in Australia; or
- b. when You were not permitted to provide such Professional Services under the terms, conditions, undertakings or limitations of Your professional registration.

Railways, Tramways and Trolleybuses

the construction and/or operation and/or ownership and/or structural maintenance of railways, tramways or trolleybuses.

Related Entities

Claims made against You by or on behalf of:

- a. any other one of You or any other legal entity Covered under this Policy;
- b. any Subsidiary Company or parent company of Yours;
- c. any joint venture partner of Yours; or
- d. any entity operated, controlled, owned or managed by You.

Retroactive Date

any act, error, omission or conduct committed or alleged to have been committed prior to the Retroactive Date stated in the Schedule.

Terrorism

any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, bodily injury or liability or for any cost or expense including any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

Trading Debts, Profit, Refund of Fees

the refund or payment to You of a trading debt, loss of profit or refund of fees or other remuneration or other consideration paid or due to You or Your agent, sub-agent, contractor or sub-contractor or any person or party Covered under this Policy.

Vehicle

Your ownership, use or operation of any Vehicle.

War or Appropriation

any war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Watercraft

Your ownership, use or operation of any Watercraft.

General Conditions

The following general conditions apply to this Policy. Please read them carefully.

It is important that these conditions are observed.

If You or any other person Covered under this Policy do not comply with these conditions the Cover under this Policy may be reduced or this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

Alteration of Risk

You must advise Us or your intermediary immediately if, during the Period of Cover, there is a change in:

- a. the nature of Your Professional Services;
- b. Your address or the location of risk from where You conduct Your Professional Services;
- c. Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration status;
- d. Your financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- e. any other change to Professional Services whereby the risk Covered under this Policy is increased.

We may cancel this Policy or alter the Premium and/or the terms of this Policy once You advise Us or your intermediary of the change. We may do this with effect from the date You knew, or should have known, of the change in Your Professional Services or of any other increase in risk.

If You do not advise Us or your intermediary about a change in Your Professional Services, or of other changes in the risk Covered under this Policy We may refuse to pay Your claim under this Policy.

Cancellation

Cancellation by You

You may cancel this Policy at any time by giving Us written notice.

Cancellation by Us

We may cancel this Policy when We are entitled to do so in accordance with the Insurance Contracts Act 1984.

In the event of cancellation by You or by Us:

- a. We will retain from the Premium You have paid to Us an amount that represents the period You were Covered by Us up to the date of cancellation and refund the balance of the Premium paid by You; and
- b. We may deduct from Your refund amount any reasonable administrative and transaction costs incurred by Us that are reasonably related to the acquisition and termination of this Policy.

Joint Insurance – Non-imputation

Where this Policy Covers more than one of You:

- a. any misstatements or misrepresentations in Your Application for this insurance or in any information provided for any alteration to or renewal of this Policy or failure to comply with the duty of disclosure by one of You will not be imputed to any other of You where that other is innocent of and had no prior knowledge of the misstatement, misrepresentation or failure to comply with the duty of disclosure; or
- b. a failure of one of You to comply with all of the provisions of this Policy will not prejudice the Cover afforded to any other of You provided that other one of You is innocent of the conduct and advises Us in writing of all the facts relating to the failure as soon as possible after becoming aware of the failure.

Jurisdiction

Any dispute arising under this Policy will be determined by Australian courts and in accordance with the laws of the State or Territory of Australia in which this Policy was issued.

Non-Accumulation of Limits of Liability

Where two or more insurance policies issued by Us (one of which includes this Policy) provide Cover in respect of the same claim the maximum amount We will pay in respect of that claim is the highest

applicable Limit of Liability amount available under any one of such policies.

Only one Excess shall apply to such claim which will be the Excess applicable to the policy with the highest Limit of Liability amount.

Notices and Authorisation

Where there is more than one of You Covered under this Policy the person or the legal entity stated in the Schedule as the Insured shall be deemed the agent for the purposes of receiving notices for all other persons or entities Covered under this Policy.

We will send all notices to Your last notified address.

The Insured stated in the Schedule will also be authorised to act on behalf of all other persons or entities Covered in respect of all matters relating to this Policy.

Other Insurance

Where a claim Covered under this Policy may also be covered under another policy of insurance (not issued by Us) then We reserve Our right to seek contribution from the other insurer. When We so require You and/or any other person or entity entitled to Cover under this Policy must give Us written notice of any insurance covering, whether in whole or in part, the claim under this Policy.

Premiums

Premium Payment

The Cover provided under this Policy does not commence until You have paid or have agreed to pay Your Premium to Us for the Period of Cover.

Payment in Australian Currency

Payment of all Premiums payable for this Policy and any continuation thereof shall be made in Australian currency only.

Reasonable Precautions

You are required to:

- a. comply with all laws and regulations imposed by any government statutory authority for the safety of property or person; and

- b. only employ competent Employees, servants and agents who also comply with clause a) above.

Waiver of Rights and Subrogation

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

We will not pay a claim under this Policy where You have agreed not to recover from any person, entity or corporation liable to compensate You for liability, or where You have agreed under any contract, lease or similar agreement to limit or exclude any right of recovery against any third party who would otherwise be liable to compensate You with respect to that liability.

Claims Conditions

The following claims conditions apply to this Policy. Please read them carefully.

It is important that these claims conditions are observed.

If You or any other person Covered under this Policy do not comply with these conditions the Cover under this Policy may be reduced or this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

Admission or Authorisations

You must obtain Our written consent before making any admission, offer, promise or offer of indemnity in connection with any claim under this Policy.

Claim Notification

You are required to provide Us with:

- a. notice of any liability or Claim made against You as soon as reasonably possible after any of these occur or You are notified of such liability or of any Claim made against You or are served with a notice in respect of any Inquiry; and
- b. all correspondence and/or notice of claim under this Policy and forward to Us every communication, Writ or Summons or other court pleading within seventy two (72) hours of receipt by You or service on You.

Claims Control and Legal Proceedings

We may, in Your name, take over and have full discretion in the conduct of the defence or prosecution of legal proceedings or settlement of any claim under this Policy or in the exercise of Our rights of subrogation.

Claims Cooperation

You must provide to Us any reasonable assistance We require to investigate, defend or settle any claim under this Policy.

In particular, You are required to provide Us with:

- a. Your cooperation in assisting Us to handle any claim under this Policy on Your behalf including

the gathering of all relevant information and Your attendance at court to give evidence; and

- b. at Your own expense, such books of account and other business books, computer records and other documents, proofs, information, explanations and other evidence as We may require for the purpose of investigating or verifying a claim under this Policy.

Claims Payments in Australian Currency

Payment of all claims Covered under this Policy shall be made in Australian currency only.

Excess

You must first pay the Excess amount specified in the Schedule before We will make any payment in respect of a claim under this Policy. Our liability to make any payment in respect of a claim shall be limited to that part of the claim above the Excess.

GST

GST and Claim Payments for Compensation

Where We make a payment under this Policy as compensation instead of as a payment for a relevant 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 had the payment been applied to acquire such goods, services or other supply.

GST and Claim Payments for Legal and Other Costs

If We pay Defence Costs or any other costs or expenses on Your behalf or incurred by You with Our prior consent in relation to any claim under this Policy We will not pay or reimburse the amount of GST included in those costs or expenses to the extent that You are entitled to Input Tax Credits in relation to such costs and expenses.

Limitation of GST Payment

If the Limit of Liability amount or other limits under this Policy is/are not sufficient to Cover Your claim under this Policy We will only pay the respective proportion of the relevant GST amount that relates to the amount of Our settlement of Your claim under this Policy.

Legal Proceedings and Waiver of Legal Privilege

Solicitors and other legal representatives retained by Us to act on Your behalf, or on behalf of any other Insured, must at all times be at liberty to disclose to Us any information obtained in the course of so acting whether from You or any other person or entity. For that purpose You and any other person or entity Covered under this Policy agree to waive any claim to legal professional privilege in respect of such information. We may rely on such information to determine Our obligation to provide Cover under this Policy.

Our Right to Subrogation

Where We make a payment to You or on Your behalf in respect of any claim under this Policy, We will have the right to recover or obtain contribution from any person or organisation whom We consider liable at law for the liability and We shall be entitled to all Your rights of recovery against such person or organisation and We have the right to take such action in Your name.

You will be required to do all that is necessary to assist Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from any other party to which We are entitled under this Policy.

Senior Counsel Clause

We will not require You to contest any Claim unless a Senior Counsel (mutually agreed upon by You and Us or if no agreement can be reached within a reasonable time then by the President at the time of the Law Society of the State or Territory in Australia in which this Policy has been issued) advises that the Claim should be contested after taking into consideration the likely cost of defending the Claim, the prospects of successful defence of the Claim, awards or damages if any and the costs likely to be recovered from a third party claimant. The cost of the advice will be paid by Us in addition to the applicable Limit of Liability amount.

Your Right to Contest

Where We recommend settlement of a third party claim under this Policy and You do not agree with the proposed settlement but wish the matter to remain contested, Our liability shall not exceed the amount for which the claim could have been settled if the matter had not been contested. Any Defence Costs and all other costs shall be limited to those incurred up to the date the claim could have been settled.

Definitions

This Policy has words and terms with special meanings. We explain their meaning in the following definitions.

These defined words or terms are shown with a capital letter at the start of each word. Please read all definitions carefully.

Aircraft

means any craft or object designed or intended to move through air, space or atmosphere other than model aircraft.

Application

means the information provided by You or on Your behalf and submitted to Us when applying for this Policy and which We have relied on when agreeing to issue this Policy.

Australia, Australian

means the States and Territories of Australia.

Business Documents

means written or printed deeds, wills, agreements, manuscripts, maps, plans, drawings, records, Electronic Data, designs, books of account, books, letters, certificates, and other documents of any nature:

but does not include:

- a. Money, bearer bonds, coupons or book debts; or
- b. documents of aesthetic, historic, scientific or social value for past, present or future generations.

Claim

means:

- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim, third or similar party notice served on You seeking compensatory damages and costs; or
- b. a written or verbal demand for compensatory damages and costs made by a third party against You.

Cover, Covers, Covered

means the indemnity provided under this Policy.

Defence Costs

means the necessary and reasonable legal costs and expenses incurred by Us or by You with Our prior written consent in the investigation, defence or settlement of a Claim Covered under this Policy or in respect of the Cover provided under any of the additional benefits Covered under this Policy.

Any legal costs incurred by Us or by You in determining whether there is Cover provided to You under this Policy will not form part of Defence Costs.

Electronic Data

means 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 include programs, software and other coded instructions for such equipment.

Employee

means a natural person who has at any time entered into a contract of service or apprenticeship with You and/or for whom You are required by virtue of worker's compensation or similar legislation to effect worker's compensation insurance cover.

Endorsement

means a written notification given to You by Us that details changes to Your Cover under this Policy.

Excess

means the amount of money stated in the Schedule or elsewhere in this Policy that You must pay or bear as the first payment in respect of any claim under this Policy.

Where the Excess is stated as being 'costs exclusive' We will not apply the Excess to Your own Defence Costs but You will be required to pay the Excess amount in respect of any payment of compensation and/or the claimant's own legal costs and expenses.

Where the Excess is stated as being 'costs inclusive' You will be required to pay the Excess amount

in respect of any payment of compensation, the claimant's legal costs and expenses and Your own Defence Costs.

Good Samaritan Acts

means the rendering of or failure to render first aid and assistance in an emergency situation or accident to stabilise an injured person or to prepare the injured person for transfer to a medical facility or other place and where You are in attendance as a bystander or passer-by and where there is no expectation of payment or other reward for the rendering of that first aid or assistance.

GST and GST Act

means goods and services tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

Input Tax Credit has the same meaning as that in the GST Act.

Hovercraft

means any vessel, craft or device which uses a cushion of air provided by a downward thrust to travel over water and land.

Inquiry

means an official investigation, examination or inquiry directly relating to an act, error, omission or conduct by You or on Your behalf in Your provision of the Professional Services and where the findings of such an investigation, examination or inquiry may lead to a Claim Covered under this Policy being made against You.

Limit of Liability

means the maximum amount We will pay under this Policy as stated in the Schedule inclusive of all additional amounts provided for in any relevant additional benefit under this Policy.

Money

means coin, bank notes, currency notes, cheques, credit card sales vouchers, securities, postal orders, money orders, negotiable and non-negotiable securities and other like documents of value such

as phone cards and/or stored value cards, unused postage and revenue stamps, public transport tickets, private transport tickets (excluding airline tickets), lottery tickets, authorised gift vouchers, discount vouchers from external parties and contents of franking machines and includes cash boxes, alarm bags or any other portable container used to convey money which is owned by You:

but does not include Money while in the possession of or carried by professional money carriers, professional carriers or common carriers.

Period of Cover

means the period of time stated in the Schedule for which We agree to provide You with Cover under this Policy unless this Policy is cancelled in which event the Period of Cover will end on the effective date of the cancellation.

Policy

means the following:

- a. the Policy wording;
- b. the Schedule; and
- c. any Endorsement.

Pollutant

means any solid, liquid, bacterial, viral, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.

Premium

means the payment You make to Us for this Policy or for an alteration to this Policy and includes all applicable government or statutory taxes and charges including GST.

Principal

means the sole practitioner or a partner of a partnership firm, or a director of the legal entity stated as the Insured in the Schedule.

Professional Services

means the professional business services provided by You or on Your behalf as stated in the Schedule.

Public Relations Costs

means the necessary and reasonable costs of an independent qualified and experienced public relations consultant appointed by a Principal.

Retroactive Date

means the retroactive date stated in the Schedule as applicable to this Policy.

Schedule

means the Schedule issued by Us containing details of Cover specific to You including but not limited to Your Policy number, the Period of Cover, details of the Cover You have selected, Limit of Liability and other limits of Your Cover and any Excesses You must pay and which attaches to and forms part of this Policy.

Subsidiary Company

means any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the corporate entity stated in the Schedule and which is incorporated and domiciled in Australia.

Terrorism

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

Vehicle

means any type of machine on wheels, on skis or on self-laid tracks designed to be moved other than by manual or animal power, and includes any trailer while attached to a Vehicle:

but does not include motorised wheelchairs, electric wheelchairs, electric scooters, bicycles or Vehicles not requiring registration or compulsory third party insurance by virtue of any legislation.

Watercraft

means any vessel, craft or thing made or intended to float on or in, or travel on or through, water other than model boats.

We, Us, Our

means Guild Insurance Limited ABN 55 004 538 863 AFS Licence No 233791; 5 Burwood Road, Hawthorn, Victoria 3122.

You, Your, Insured

means:

- a. the person stated in the Schedule as the Insured; and/or
- b. the legal entity stated in the Schedule as the Insured including all of its:
 - current or former partners, Principals, officers and Employees; and
 - prior corporate entities through which it has previously traded; and
 - Subsidiary Companies which were in existence at the commencement of the Period of Cover.



We're here to help

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New South Wales

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Fax: (02) 9018 9900

Who is the insurer?

This policy is underwritten by Guild Insurance Limited ABN 55 004 538 863 and AFS Licence Number 233791 trading as Acerta.

Effective date: 15 November 2014