



# Not for Profit General Liability Policy



Making a real difference to the way insurance is provided  
to the Not for Profit sector

## Community Underwriting - Our Story

Community Underwriting operates under a unique business model in the Australian insurance market.

Our story begins over 40 years ago when the NSW Meals on Wheels Association (now Meals on Wheels NSW Ltd) assisted a few member services that were having difficulty obtaining insurances at a reasonable cost.

That grew over the next thirty years into a comprehensive insurance facility assisting over 800 Not for Profits around Australia. In 2014 we created a change in the way that the facility provided insurance to Not for Profit organisations.

Today we are an underwriting agency majority owned by our larger Not for Profit clients, returning our surplus funds back into the sector.

Our 40 year heritage and being uniquely owned by the sector gives us a level of knowledge and empathy that is difficult to match in a corporate insurance organisation.

Our business model is tangible proof of this difference. Each year seventy percent of our surplus is returned to our Not for Profit shareholders as donations.

A further five percent of our surplus is set aside each year to fund a small grants program for our non shareholder clients. Our insurer partners now add to this grants pool to enable us to expand even further the number of clients that we are able to assist.

Join us in making a real difference to the way insurance is provided in our sector.

# Contents

Important Information	3
Insuring Clauses	6
Automatic Extensions	8
Optional Extensions	10
Definitions	11
Exclusions	17
Conditions	24
Additional Information	27

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Insuring Not for Profits - It's All We Do

Community Underwriting Agency Pty Ltd  
ABN 60 166 234 715  
AFS License No 448274

# Important Information

## About Community Underwriting

Community Underwriting Agency Pty Ltd (Community Underwriting) acts under binding authorities as Agent for:

- Berkley Insurance Company trading as Berkley Insurance Australia (Berkley Insurance Australia); and/or
- Berkshire Hathaway Specialty Insurance Company (Inc. Nebraska, USA.)

to issue, vary and cancel policies on each insurers behalf.

In all aspects of this Policy, Community Underwriting acts as an agent for the Insurers and not for the Insured.

## About The Insurers

### *Primary coverage for General and Products Liability*

Where the Limit of Liability in the Schedule specifies an amount of up to \$20,000,000 we act as agent on behalf of Berkley Insurance Australia.

Berkley Insurance Australia (ABN 53 126 559 706) is part of the Berkley Group of Companies. Founded in 1967 the Berkley Group of Companies is one of the USA's premier commercial lines property and casualty insurance providers. Each of the operating units in the Berkley group participates in a niche market requiring specialised knowledge about a territory or product.

The Berkley Group of companies is led by Berkley Corporation, located in Greenwich, Connecticut, USA. It is listed on the New York Stock Exchange under the symbol WRB. Member companies of the Berkley Group have offices across the USA and in the United Kingdom, South America, Continental Europe, Australia, Singapore and Hong Kong.

### *Excess coverage for General and Products Liability*

Where the Limit of Liability in the Schedule specifies an amount in excess of \$20,000,000, we act as agent on behalf of Berkshire Hathaway Specialty Insurance Company for all claims that exceed the primary \$20,000,000 limit provided by Berkley Insurance Australia.

Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034) is a division of the Berkshire Hathaway group of insurance companies.

Berkshire Hathaway Specialty Insurance Company will only be liable after Berkley Insurance Australia has paid, or are held legally liable to pay, the Limit(s) of Liability applicable to the primary coverage under this Policy, and then only up to the Limit(s) of Liability as provided for in the Schedule.

The obligations of our insurers where there is more than one insurer referred to in the Schedule, are several and not joint. No insurer is responsible for of the obligations of another insurer under this Policy or separate binding authority with Community Underwriting.

## The Duty of Disclosure

### *Your duty of disclosure*

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until We agree to insure You.

### *If You do not tell Us something*

If You do not tell us anything You are required to tell Us , 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 in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

## *Renewal of Eligible Contracts of Insurance*

### *Your duty of disclosure*

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

Also, We may give You a copy of anything that You have previously told Us and ask You to tell us if it has changed. If We do this, You must tell us about any change or tell Us that there is no change.

You have this duty until We agree to renew the contract.

### *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 in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

### Claims Made Insurance

Some of the Insuring Clauses and Extensions to this Policy if selected, will be issued on a “claims made and notified basis”. This means that you are covered for claims made against you and notified to Us during the Policy Period. It does not provide cover for:

- claims arising from an event which occurred before the “retroactive date” where such a date is specified in the Schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the Policy Period);
- claims made, threatened or intimated before the period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the Policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy.

### Privacy

Community Underwriting and the insurers seek at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If We disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information:

The information contained in this document and any other documents provided to Us will be dealt with in accordance with our respective Privacy Policies.

Disclosure of Information that you provide to Us:

Community Underwriting and the insurers will only use the information in accordance with the terms of the Privacy Policies. Without limiting the application of the Policy Community Underwriting and the insurers may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with Us you consent to Community Underwriting and the insurers and these parties collecting, using and disclosing personal

and sensitive information about you for these purposes. By signing the claim form you are consenting to the above.

You warrant to Us that where you provide Us with personal information that you have collected from other individuals:

- that the information has been collected in accordance with the Privacy Act 1988.
- that We are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- you, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Community Underwriting and the insurers against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing:

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless you have given Us Your permission for Us to do this.

Cross Border:

We will share your personal information with the Community Underwriting and the insurers. Our data containing your information is stored in our data centre using dedicated hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on Our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on Our website or if you have any complaints or concerns over the protection of the information you have given to Us or that We have collected from others, contact the National Head of Claims at the Sydney address listed below or alternatively send an email to [australiaclaims@berkleyinaus.com.au](mailto:australiaclaims@berkleyinaus.com.au).

Berkley Insurance Australia - Level 7, 321 Kent Street  
Sydney NSW 2000  
Ph: 02 9275 8500 / Fax: 02 9261 2773  
Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)  
Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

### **Complaints**

Any enquiry or complaint relating to this insurance should in the first instance be referred to:

Complaints Manager, Community Underwriting Agency  
Pty Ltd P.O. Box 173, Balmain NSW 2041

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact:

The National Head of Claims, Berkley Insurance Australia  
P.O Box Q296, QVB Sydney NSW 1230; or

For Limits of Liability in excess of \$20,000,000:

Berkshire Hathaway Specialty Insurance  
GPO Box 650  
Sydney NSW 2001

Tel: 1300 021 145  
Email: [complaints.australia@bhspecialty.com](mailto:complaints.australia@bhspecialty.com)

# Insuring Clauses

## The Cover

We agree (subject to the terms, conditions, exclusions, definitions and Limits of Liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

1. Personal Injury; and/or
2. Property Damage; and/or
3. Advertising Injury;

happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence in connection with Your Business.

## Defence Costs and Supplementary Payments

In addition to Our liability to pay to You or on Your behalf under this Policy, We will:

1. defend, in Your name and on Your behalf, any claim or legal proceedings against You alleging such Personal Injury, Property Damage or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or legal proceedings is groundless, false or fraudulent;
2. pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent (which consent will not be unreasonably withheld):
  - a. in the investigation, defence or settlement of such claim or legal proceedings, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; or
  - b. in bringing or defending appeals in connection with such claim or legal proceedings;
3. pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or legal proceedings and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon;
4. pay expenses incurred by You for:
  - a. rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses, which We are prevented from paying by any law);

- b. temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof;
  - c. purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority;
5. pay all legal costs incurred by You with Our written consent for representation of You at:
    - a. any Coronial inquest or Inquiry;
    - b. any proceedings in any court, tribunal, inquiry, prosecution, hearing, commission, committee, board or authority in connection with liability insured against by this Policy.
  6. pay premiums on any bonds and/or security for costs required in any legal proceedings, but we shall have no obligation to apply for or furnish any such bonds and/or security for costs.

The amounts of such defence costs and supplementary payments incurred, except payments in settlement of claims and legal proceedings, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all defence costs and supplementary payments.

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or legal proceeding against You, We will reimburse You for the expense of such defence incurred with Our written consent

## Limits of Liability and Excess

Subject to:

- a. the 'Claim preparation expenses' provision under 'Conditions';
- b. the 'Defence costs and supplementary payments' clause above;
- c. item 4 of Additional Benefit 'Property in Your physical and legal control' below;

The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence.

For Products Liability the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence, and in the aggregate during any one Period of Insurance.

The applicable Limit of Liability and/or sublimit will not be reduced by the amount of any Excess payable by You.

# Automatic Extensions

We will provide the following cover, provided always that:

- a. the cover provided by each Automatic Extension is subject to the Schedule, insuring clauses, conditions, exclusions, definitions and any other terms of the policy (unless otherwise expressly stated); and
- b. the inclusion of any automatic extension will not increase the Limit of Liability. Where a sub-limit is stated in respect of any automatic extension, such sub-limit shall form part of and not be in addition to the Limit of Liability.

## 1. Property in Your physical and legal control

Exclusion 23 will not apply to the following property:

1. premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of Your Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises;
2.
  - a. premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with Your Business; or
  - b. any other property temporarily in Your possession for the purpose of being worked upon

however no cover is provided by this Policy in respect of physical damage to, destruction of or loss of that part of any property upon which You are working where the loss arises directly from the performance of such work;

3. any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You provided that You do not operate the car park for reward, as a principal part of Your Business;
4. the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives, committee members, volunteers or Employees, or the clothing and personal effects of any of Your visitors;
5. any property not mentioned in clauses 1), 2), 3) and 4) of this additional benefit whilst in Your physical or legal care, custody or control where You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 5) shall not exceed \$250,000 or the amount stated in the

Schedule for Property in Your Care Custody or Control, in respect of any one claim or series of claims arising out of any one Occurrence.

## 2. Claims Preparation Costs

In addition to the Limit of Liability provided by this Policy, We will pay up to \$50,000 in respect of each claim under this Policy for reasonable professional fees and such other expenses incurred by You for the preparation of the claim under this Policy.

## 3. Clients in Care

The definition of Named Insured extends to include any permanent resident of a care facility managed by or operated as part of Your Business but only to the extent that they do not have any other effective insurance in place.

## 4. Member to Member Liability

The cover provided by this Policy extends to include any claim or legal proceeding against any member of the Insured made by another member arising out of an Occurrence in connection with the business.

## 5. Public Relations Expenses

The cover provided under this Policy extends to include up to \$100,000 any one occurrence or series of occurrences for any reasonable public relation costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) in the design and implementation of a publicity campaign to limit the adverse effects or negative publicity on an Insured as a result of any claim or series of claims covered under this Policy.

Where an Insured has also arranged an Association Liability Policy with Us, the benefit provided will not be cumulative of any cover provided by that Policy under Insuring Clause 1.1.7 Crisis Consultancy Expenses or Automatic Extension 2.4 Public Relations Expenses.

## 6. Workplace Trauma

The cover provided under this Policy extends to include up to \$10,000 any one occurrence or series of occurrences for any services provided by a suitably specialised independent medical professional to any director, executive, committee member, Employee, voluntary worker, member of the organisation or member of the general public that have witnessed a traumatic and unexpected death or significant injury of a person on Your premises or in Your care.

Where an Insured has also arranged a Voluntary Workers Personal Accident Policy with Us, the benefit provided will not be cumulative of the cover provided by that Policy under Additional Benefit 3.14 Workplace Trauma.

### **7. Remotely Piloted Aircraft**

The cover provided by this Policy extends to any Personal Injury and/or Property Damage happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence which is caused by the use of a Remotely Piloted Aircraft (RPA) in connection with Your Business.

It is a condition precedent to coverage under this Automatic Extension 7 that all video footage and photographs recorded within 24 hours of any Occurrence are submitted to Us.

The cover provided by this Automatic Extension is subject to Exclusion 33 Remotely Piloted Aircraft (RPA)

### **8. Vicarious Liability for Conduct of Contractors, Consultants or Agents**

The cover provided under this Policy extends to include any Personal Injury and/or Property Damage happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence which is caused by the conduct of a contractor, consultant or agent that is engaged by You.

Provided that the cover provided under this Policy shall not extend to such contractors, consultants or agents unless specifically noted and confirmed by Us as an Insured.

# Optional Extensions

The following Optional Extensions are only applicable to this Policy if the Schedule shows You have elected this Optional Extension and paid any additional premium required by Us.

## 1. Molestation

- a. Exclusion 19 (Molestation) of this Policy does not apply to any liability arising out of or in connection with the Molestation of any person provided that You had in place the necessary protocols required by legislation to limit or prevent such Molestation;
- b. Our liability under this clause shall not exceed any specific Molestation sublimit shown in the Schedule for any one Occurrence and for all claims during the Period of Insurance in the aggregate; and
- c. this Extension only applies to Your vicarious liability and does not apply to any individual Insured involved in or causing or assisting in the Molestation of any person.

However, we will not pay compensation where:

- I. the Molestation is committed with Your consent or through deliberate neglect on Your part;
- II. Molestation is committed by You against any director, executive officer, employee or volunteer;
- III. You knew or ought reasonably to have known that the perpetrator of the Molestation had previously:
  - 1. committed Molestation; and/or
  - 2. been convicted of Molestation; and/or
  - 3. whilst being a director, executive officer, employee or volunteer of Yours, been the subject of a prior complaint in respect of Molestation which had not been appropriately investigated by You.

## 2. Prior Acts Claims Made Coverage

Where You have previously arranged insurance for Personal Injury and/or Property Damage that provided indemnity on a “claims made” basis, then We will pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- a. Personal Injury; and/or
- b. Property Damage;

for any Claim which is caused by or arising out of an Occurrence:

- i. where the Claim is first made against You and notified to Us during the Period of Insurance; and
- ii. where the Occurrence happened prior to the inception date of Your first Policy with Us that has included this Optional Extension; and
- iii. where the Occurrence happened after the Retroactive Date specified in the Schedule; and
- iv. happening within the Geographical Limits in connection with Your Business.

We will not pay compensation under this Optional Extension in respect of any Claim:

- 1. where there was no “claims made” insurance in place at the time of the Occurrence that has given rise to the Claim; and/or
- 2. for which indemnity is available from previous insurers; and/or
- 3. which You were aware of prior to inception of this policy or which You or a reasonable person would have considered at any time prior to the inception of this Policy may have resulted in a claim under the previous “claims made” insurance.

## 3. Compensation for Temporary Staff Costs

The cover provided under this Policy extends to include the reimbursement of any employment costs (recruitment fees, wages, salaries, fees or benefits) to replace an existing Employee that has been stood down whilst being investigated for allegations of Molestation for which indemnity may be provided under Optional Extension

However, we will not pay compensation under this Optional Extension:

- 1. If Optional Extension 1 has not been elected by the Insured;
- 2. If indemnity would not be provided under Optional Extension 1;
- 3. After the Employee is no longer being paid by You;
- 4. For a period longer than 6 months; and
- 5. For an amount in excess of \$50,000 any one claim.

The Excess applicable to this Extension will be the Excess shown in the Policy Schedule for Optional Extension 1. Molestation.

# Definitions

The following definitions shall apply to all sections of this Policy.

**“Accidental”** means unexpected and unintended from Your standpoint.

**“Advertising Injury”** means injury arising out of:

- a. libel, slander or defamation; or
- b. any infringement of any patent, copyright or passing off of title, logo, slogan, design or trademark; or
- c. unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- d. invasion of privacy; or
- e. any breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, email, internet, broadcast, exhibit or telecast and caused by or arising out of Your advertising activities or any activities conducted on Your behalf.

**“Aircraft”** means any craft or object designed to travel through air or space. However Aircraft does not mean:

- a. Remotely Piloted Aircraft (RPA); or
- b. model aircraft; or
- c. unmanned inflatable balloons.

**“Asbestos”** means crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite, or fibrous tremolite or any mixture or derivative containing any of those minerals, or dust, fibres or particles of any of those materials.

**“Australia”** means the Commonwealth of Australia including any of its dependencies and Territories.

**“Business”** means the business(es) shown and described in the Schedule, including the ownership and/or tenancy of any premises shown in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall also include:

- a. private work undertaken by any Employee or voluntary worker for any director, officer or executive;
- b. participation in or the provision by You or on your behalf of any Event (subject to exclusion 11 contained in this Policy);
- c. the hire or loan of plant and/or equipment to other

- d. parties;
- d. conducted tours of Your premises;
- e. the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting service by You or on Your behalf;
- f. the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and child care facilities by You or on Your behalf, which are primarily for the benefit of Your Employees;
- g. any prior operations or activities which have ceased or have been disposed of but for which You may retain a legal liability and You have disclosed this information to Us.

**“Claim”** means:

- i. a written demand for monetary damages;
- ii. a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading;
- iii. a criminal proceeding commenced by a summons or charge; or
- iv. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document.

**“Compensation”** means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury. Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

**“Computer System”** means an information technology system made up of a network of one or more items of computer hardware or software and the electronic data stored thereupon, that share a central storage system and various peripheral devices that are proprietary to or licensed to the Insured.

**“Electronic Data”** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic or electromechanical data processing or electronically-controlled equipment.

**“Employee”** means any person who is employed by You and/or in respect of whom You are required to have cover for workers Compensation or similar cover by any workers Compensation legislation.

**“Employment Practices”** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your Employees or any

prospective employee.

**“Endorsement”** means documentary evidence of an alteration to this Policy.

**“Event”** means any form of planned meeting, exhibition, conference, performance, festival, fete, educational, social or fundraising occasion outside of an organisations normal activities. Event does not mean any:

- a. Small low risk activity or event that an Insured may organise or participate in as part of client engagement, fund raising, education or raising the profile of the organisation including daily outings, working bees, organised games and non-contact sports, attendance at market stalls, picnics, dinners, social functions, recreational and welfare outings, award functions;
- b. Event held on Your premises with less than 150 people estimated to be in attendance;
- c. Event held in commercially operated premises such as a club, restaurant, conference centre, theatre, community hall or facility with less than 750 people estimated to be in attendance;
- d. Event not held on your premises or in commercially operated premises; with less than 250 people estimated to be in attendance;
- e. Meetings of a congregation, membership or, community, or client activities that take place on a regular basis or annual holy days or religious celebrations other when attendees are expected to exceed 2,000 attendees.

**“Excess”** the first amount of each claim or series of claims, arising out of any one Occurrence, for which You are responsible. The Excess applicable to this insurance appears in the Schedule. The Excess applies to all amounts for which We will be liable, including the indemnity provided under the heading Defence Costs and Supplementary Payments.

**“General Liability”** means Your legal liability in respect of Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in connection with Your Business other than Products Liability.

**“Geographical Limits”** means anywhere in the world, except North America where this section of this Policy will only apply in respect of:

- a. Products exported to North America without Your knowledge; and/or
- b. travelling directors, partners, officers, executives, committee members, volunteers or Employees of the Insured whose normal place of residence is outside

North America and who are not undertaking manual work or supervision of work in North America.

**“Good Samaritan Act ”** means assisting at the scene of a medical emergency, accident or disaster by the Insured or any Named Insured present either by chance, or in response to an S.O.S. call following a disaster or accident whilst at or in transit to or from the address of the Business, provided however that the Insurer shall not be liable where the employee was acting at the time under a contract of employment with any employer other than the Insured.

**“Governmental Authority”** means any:

- a. national, domestic, international, foreign, federal, state, provincial, territorial, local or tribal government or other political subdivision thereof, whether within or outside Australia; and/or
- b. agency, body, unit, entity, or any other instrumentality of any government or other political subdivision thereof exercising executive, legislative, judicial, regulatory, or administrative functions of government.

The foregoing definition of Governmental Authority shall apply to all other instances in which the phrase governmental authority appears in this Policy, including any other endorsements to this Policy, regardless of whether such phrase is capitalized, appears in quotation marks, or is designated through punctuation, typeface, or otherwise as a word or phrase having special meaning.

**“Hovercraft”** means any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**“Insured Amount”** means the maximum amount that will be paid under a section or part of a section of this Policy as specified in the Schedule.

**“Incidental Contracts”** means:

- a. any written rental agreement or lease and/or hire of real or personal property not requiring an obligation to insure such property;
- b. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- c. any written contract with any railway authority for

the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings;

- d. any written contract, warranty or agreement to indemnify or not to seek contribution, recovery or indemnity from a statutory authority, government agency or government department, provided that such agreement relates to any funding arrangements or the provision of goods, services or facilities as part of Your Business;
- e. those contracts designated in the Schedule.

**“Limit of Liability”** means the amount specified in the Schedule next to the heading Limit of Liability.

**“Medical Professional”** means any medically qualified and registered practitioner including but not limited to general practitioners, surgeons, cardiologists, obstetricians, anaesthesiologists, medical radiation practitioners, pathologists, dental practitioners, optometrists, psychiatrists, paramedics and midwives including student doctors and medical interns.

**“Medical Services”** means:

- a. any treatment carried out under general anesthesia;
- b. any dental services or treatment;
- c. any procedures connected with weight loss, sterilisation, childbirth or provision of midwife services.

**“Molestation”** means any abuse of a sexual nature, indecent exposure or sexual misconduct, whether or not such act is the subject of a criminal investigation.

**“Named Insured”** means:

- a. the person(s), corporations and/or other organisations specified in the Schedule;
- b. all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in Australia and/or any other organisations under the control of the Named Insured;
- c. all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance;
- d. every Subsidiary Company and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences

insured against by this Policy, which occurred prior to the date of divestment.

**“North America”** means:

- a. the United States of America and Canada;
- b. any state, territory or protectorate incorporated in, or administered by, the United States of America or Canada; and
- c. any country or territory subject to the laws of the United States of America or Canada.

**“Occurrence”** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in item e) of the definition of ‘Personal Injury’) from Your standpoint.

With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

**“Period of Insurance”** means the time cover commences to the time cover expires. The dates are shown on the current Schedule. Unless stated otherwise, cover shall expire at 4.00 pm local time at the place where You arranged the cover.

**“Personal Injury”** means:

- a. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- b. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- c. wrongful entry or wrongful eviction from or other invasion of right to private occupancy of property;
- d. libel, slander or defamation of character or invasion of privacy, unless arising out of Advertising Injury;
- e. assault and battery including use of force not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or

latent disability; such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**“PFAS”** means any perfluoroalkyl or polyfluoroalkyl substances, including but not limited to:

- a. Any fluorinated chemical containing at least one fully or partially fluorinated carbon atom, whether polymer or non-polymer, including but not limited to: any perfluoroalkyl and polyfluoroalkyl substances, perfluoroalkyl acid(s), perfluorooctanesulfonic acid(s), perfluoroalkane, hexafluoropropylene oxidedimer acid(s), perfluorobutanesulfonic acid(s), perfluorohexanesulfonic acid(s), perfluoroalkane sulfonamides, perfluoroalkyl ether carboxylic acid(s) (including, without limitation, perfluoro-butanoic, perfluoro-hexanoic, perfluoro-octanoic, perfluoro-nonanoic, and perfluoro-decanoic acids), fluorotelomer substances, perfluoroalkane sulfonamide substances, perfluoroalkane sulfonyl fluorides, perfluorodecane sulfonate, ammonium perfluorooctanoate, perfluoroalkyl iodides, per- and polyfluoroalkyl ether-based substances, fluoropolymers, side-chain fluorinated polymers, perfluoropolyethers, perfluorosulfonic acid salts, perfluorosulfonate salts, perfluorocarboxylic acid salts, perfluorocarboxylate salts, all of the foregoing by whatever names known, including but not limited to chemical names, trade names (e.g., “GenX” or “ADONA”), or any other name or descriptor (e.g., “C8”); ;
- b. Any chemical now or in the future related or similar to the items contained in (a) including but not limited to those identified in (i) any of the U.S. Environmental Protection Agency’s chemical lists, (ii) list of per- and polyfluoroalkyl substances subject to toxic chemical release reporting under section 313 of the U.S. Emergency Planning and Community Right to Know Act (“EPCRA”), 42 U.S.C. § 11001 et seq., including those now or in the future listed in 40 C.F.R. § 372.65, or (iii) any statute, law, regulation, rule or written proposed rule, guidance document, list or bulletin issued, adopted, or maintained by any Governmental Authority;
- c. Any polymers, oligomers, monomers, non-polymer chemicals, homologues, isomers, telomers, salts, esters, alcohols, acids, precursors, degradants, derivatives, and breakdown products or by-products associated with any chemical or substance described in paragraphs (a) or (b) of this definition; or
- d. Any good, product, substance, mixture, food, liquid, supplement, and/or medication, including containers, materials, parts, equipment, or packaging furnished in connection with such good, product,

substance, mixture, food, liquid, supplement, and/or medication, that consists of or contains anything described in paragraphs (a), (b) or (c) of this definition.

**“Policy”** means this document, the Schedule and any Endorsement or memoranda affixed and any future documents issued to You which amends the Policy wording or Schedule. Together they form the insurance contract.

**“Pollutants”** means any solid, liquid, gaseous or thermal irritant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

**“Products”** means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in Your Business), including any labels, packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such Products and anything which, by law or otherwise, You are deemed to have manufactured in the course of Your Business including discontinued Products.

Provided always that for the purpose of this insurance the term ‘Products’ shall not be deemed to include:

- a. food and beverages supplied by You or on Your behalf primarily to Your Employees as a staff benefit;
- b. any vending machine or any other property rented to or located for use of others but not sold by You.

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

**“Products Liability”** means Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such Products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such Products has been relinquished to others.

**“Property Damage”** means:

- a. physical loss, destruction of or damage to tangible

property, including the loss of use thereof at any time resulting therefrom; and/or

- b. loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

**“Remotely Piloted Aircraft”** (RPAS) means as defined in the Civil Aviation Safety Regulations Part 101 or as amended or replaced from time to time.

**“Retroactive Date”** means the date shown in the Schedule as the Retroactive Date:

- a. unlimited retroactive cover – if no Retroactive Date is specified in the Schedule or if the Retroactive Date is specified in the Schedule as “Unlimited”, this Policy will provide indemnity in respect of Claim arising from acts errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- b. limited retroactive cover – where a Retroactive Date is specified in the Schedule, then this Policy shall only provide indemnity in respect of Claims arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

**“Schedule”** means the most current Schedule of Insurance or any future renewal Schedule, including any Endorsements issued by Us in connection with this Policy.

**“Silica”** means Silicon dioxide, whether occurring in crystalline, amorphous and impure forms, silica particles, silica powder including nano silica powder, silica dust, silica fibres or silica compounds.

**“Social Engineering Fraud”** means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

- a. transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;
- b. transferring or delivering any property to another person or entity;
- c. revealing confidential information; or
- d. changing or altering bank account or payment details of any person or entity.

**“Software”** means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically

controlled equipment, including any operating system.

**“Subsidiary Company”** means:

- a. any company in which You have a controlling interest. For the purpose of this definition the term ‘controlling interest’ shall mean the beneficial ownership of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders of the company.
- b. any parish, agency, or office controlled or sponsored by the Named Insured;
- c. any trust or foundation controlled or sponsored by the Named Insured

unless otherwise excluded in the Schedule.

**“Terrorism”** means an act including but not limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is committed for or in connection with any political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

**“Tool of Trade”** means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Work Site. Tool of Trade does not include any Vehicle whilst travelling to or from a Work Site or Vehicles that are used to carry goods to or from any premises.

**“Vehicle”** means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

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

**“We”, “Us”, “Our”** means Community Underwriting Agency Pty Limited (ABN 60 166 234 715 AFS License No 448274) as agent for Berkley Insurance Australia (ABN 53 126 559 706) and/or Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence 466713) in respect to risks with limits in excess of \$20,000,000).

**“Work Site”** means any premises or site where any work is performed for and/or in connection with Your Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

**“You”, “Your”, “Yours” and “Insured”**

Each of the following is an Insured to the extent specified below:

- a. the Named Insured;
- b. every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, committee member, Employee or voluntary worker of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with Your Business), intern, work experience persons or volunteers while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities;
- c. any Employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such Employee superannuation fund or pension scheme which is not administered by corporate fund managers;
- d. every principal in respect of the principal’s liability arising out of:
  - i. the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and limits of liability as are provided by this Policy;
  - ii. any Products sold or supplied by the Named Insured, but only in respect of the Named Insured’s own acts or omissions in connection with such Products and in any event only for such coverage and limits of liability as are provided by this Policy;
- e. every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law (whether written or implied), agreement or permit to provide insurance such as is afforded by this Policy, but only to the extent required by such law, agreement or permit and in any event only for such coverage and limits of liability as are provided by this Policy;
- f. every officer, member, Employee or voluntary helper of the Named Insured’s canteen, social and/or sporting clubs, residents committees or associations,

first aid, medical, ambulance or fire fighting services, charities, educational, resident associations, welfare and/or child care facilities, while acting in their respective capacities as such;

- g. any director, partner, proprietor, officer, committee member or executive of the Named Insured in respect of private work undertaken by the Named Insured’s Employees or volunteers for such person and any Employee or volunteer whilst actually undertaking such work;
- h. the estates, legal representatives, heirs or assigns of:
  - i. any deceased or insolvent persons; or
  - ii. persons who are unable to manage their own affairs by reason of mental disorder or incapacity;
- i. every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and limits of liability as are provided by this Policy;
- j. any executive or employee engaged under an outsourced consulting contract whilst acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.
- k. a bishop, priest, deacon or church elder of the Named Insured or a member of a religious institution undertaking activities in connection with Your Business and/or within the scope of their duties in such capacities.

who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses h i) and h ii) above;

**“Your Business”** means the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall include:

- a. the ownership of premises and/or the tenancy thereof by You;
- b. the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting service by You or on Your behalf;
- c. private work undertaken by Your Employees for any of Your directors, partners, proprietors, officers or executives;
- d. the provision of any canteen, social and/or sporting clubs or welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your Employees.

# Exclusions

We do not cover any liability:

## 1. Advertising Injury

for Advertising Injury:

- a. resulting from statements made at Your direction with knowledge that such statements are false;
- b. resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- c. resulting from any incorrect description of Products or services;
- d. resulting from any mistake in advertised price of Products or services;
- e. resulting from failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability; or
- f. incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

## 2. Aircraft, Hovercraft

arising from:

- a. the ownership, maintenance, operation, or use by You of any Aircraft or Hovercraft;
- c. any property used for the purpose of an airport or any Aircraft landing strip other than in respect of any privately owned landing strip.

## 3. Aircraft Products

arising out of any Products which an insured person knew or has reasonable cause to believe would be or is intended for incorporation into any critical part, the structure, machinery or controls of any Aircraft.

## 4. Alterations, Additions and Construction

arising from or in any way connected to any construction, erection or demolition work other than such work undertaken by You or on Your behalf where the total amount of all work is less than \$500,000.

## 5. Asbestos

directly or indirectly caused by, arising from or in any way connected to inhalation of or fears of the consequences of exposure to or inhalation of Asbestos.

## 6. Breach of Professional Duty

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable. Provided that this exclusion 6 shall not apply to claims for Personal Injury and/or Property Damage:

- a. arising out of advice which is given by You for no fee;
- b. arising out of the rendering of or failure to render medical or non medical care or treatment by any Insured Person other than a Medical Professional;
- c. for Your vicarious liability from the employment or engagement of any Medical Professional; or
- d. arising out of advice given in respect of the use or storage of Your Products; or
- e. where you are legally liable under Optional Extension 2 Prior Acts Coverage.

## 7. Medical Services

arising out of any activities conducted by a Medical Professional in connection with the provision of any Medical Services. Provided that this exclusion 7 shall not apply to claims for Personal Injury and/or Property Damage:

- i. arising out of the rendering of or failure to render medical or non medical care or treatment by any Insured Person other than a Medical Professional;
- ii. arising out of or in connection with any Good Samaritan Act;
- iii. for Your vicarious liability arising from the employment or engagement of any Medical Professional; or
- iv. where you are legally liable under Optional Extension 2 Prior Acts Coverage.

## 8. Contractual Liability

which has been assumed by You under any contract or agreement that requires You to:

- a. effect insurance over property, either real or personal;
- b. assume liability for Personal Injury and/or Property Damage and/or Advertising Injury regardless of fault;

provided that this exclusion shall not apply with regard to:

- i. liabilities which would have been implied by law in the absence of such contract or agreement; or
- ii. liabilities assumed under Incidental Contracts; or
- iii. terms regarding merchantability, quality, fitness

or care of Your Products which are implied by law or statute; or

- iv. liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

## 9. Damage to Products

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to the specific part and only that part of such product to which the damage is directly attributable.

## 10. Employers Liability

- a. for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance pursuant to or required by any legislation relating to workers compensation or accident compensation whether or not such policy, fund, scheme or self-insurance has been effected.

Provided that this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self-insurance arrangement had You complied with its obligations pursuant to such law.

- b. Imposed by:
  - i. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;
  - ii. any law relating to Employment Practices.
- c. For the purpose of exclusions 10 a) and 10 b):
  - i. the term 'Worker' means any person who is employed by You or who is deemed to be employed by You pursuant to any Workers Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers.
  - ii. the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

## 11. Events

for Personal Injury and/or Property Damage arising directly or indirectly out of or in connection with the organisation, promotion, coordination, supervision and/or operation by You or on Your behalf of any Event which involves:

- a. more than 150 people estimated to be in attendance at an event held on your premises; or
- b. more than 750 people estimated to be in attendance at an event held in commercially operated premises such as a club, restaurant, conference centre or theater; or
- c. more than 250 people estimated to be in attendance at an Event not held on your premises or in commercially operated premises;
- d. the supervision and/or operation of any form or type of firework / pyrotechnic display, amusement ride, mechanical ride, animal ride, inflatable amusement and/or any similar type of amusement unless such supervision and/or operation is contracted to an independent person or entity for the hire of such devices and you have obtained and retained current evidence of insurance from that person or entity that they hold a Public Liability insurance policy with a minimum limit of indemnity of \$10,000,000 any one occurrence;
- e. protests, demonstrations, rallies, pickets or similar activity organised or attended by You.

Provided that this Exclusion 11 shall not apply to claims for Personal Injury and/or Property Damage where We have agreed to such activities in writing.

## 12. Faulty Workmanship

for the cost of performing, completing, correcting or improving any work undertaken by You other than any liability to pay compensation for damage to other property resulting from such work.

## 13. Fines, Penalties, Punitive, Exemplary or Aggravated Damages

for any fines, penalties, punitive, exemplary or aggravated damages or damages resulting from the multiplication of compensatory damages.

## 14. Hazardous Activities

to any person who is actually participating in any performance, sport, game, trial, rally, contest or display involving:

- a. aerial activities including hot air ballooning, gliding, hang gliding, parachuting, base jumping or bungee jumping;
- b. winter snow sports other than skiing;
- c. other extreme sports or activities including paintball / skirmish games, outdoor rock climbing, abseiling, canyoning, caving, white water rafting or kayaking, jet skiing, surfing, windsurfing, scuba diving / scooter, rock fishing;
- d. motor racing, rallies or speed trials, off-road four wheel driving, trail bike riding or use of quad bikes,
- e. horse jumping or rodeo equestrian activities;
- f. the use of fire arms or pyrotechnics;
- g. boating (other than as provided under exclusion 26), water skiing, banana boat, sailing, boat races and competitions;
- h. use of private or public swimming pools where not compliant with Austswim maximum supervision ratios and water safety supervision requirements referencing teacher:student but also with application to parent / carer /child. Cover is only provided for 1:1 participant to staff supervision ratios to support swimmers with disability, additional needs or integration challenges;
- i. use of inland waterways where not compliant with Austswim or Paddle Australia maximum supervision ratios and water safety supervision requirements referencing teacher:student but also with application to parent / carer /child . Cover is only provided for 1:1 participant to staff supervision ratios to support swimmers with disability, additional needs or integration challenges;
- j. use of open waterways where not compliant with Austswim or Paddle Australia maximum supervision ratios and water safety supervision requirements referencing teacher:student but also with application to parent / carer /child. Cover is only provided for 1:1 participant to staff supervision ratios to support swimmers with disability, additional needs or integration challenges;
- k. swimming at any beach not between the flags with attending life savers;
- l. camps not at third party venues or in camp sites approved by State or National Park authorities
- m. bushwalking on a track with a grade of 4 or 5 under the Australian Walking Track Grading System.

Provided that this Exclusion 14 shall not apply to claims for Personal Injury and/or Property Damage:

- i. where We have agreed to such activities in writing; or
- ii. to any spectator or other third party not participating in the activity; or
- iii. for Your vicarious liability where You have not

arranged such activities.

#### 15. Electronic Data

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

- a. total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of electronic data and/or software;
- b. error in creating, amending, entering, directing, deleting or using electronic data and/or Software; or
- c. total or partial inability or failure to receive, send, access or use electronic data and/or Software for any time or at all, from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

However this exclusion shall not apply to any liability to pay compensation which arises from:

- i. Your everyday use of the internet for electronic communication, intranet and associated activity; or
- ii. any material on your website in support of Your Business activities.
- iii. Personal Injury

#### 16. Libel and Slander

for libel and slander:

- a. resulting from statements made prior to the commencement of the Period of Insurance;
- b. resulting from statements made at Your direction with knowledge that such statements are false;
- c. incurred by You if Your Business is advertising, broadcasting, publishing or telecasting.

#### 17. Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

#### 18. Loss of Use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- a. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b. failure of any Products or work performed by You

or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 18 b) shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such Products or work have been put to use by any person or organisation other than You.

#### 19. Molestation

for Personal Injury caused by or arising directly out of or in connection with the Molestation of any person, except where provided under Optional Extension 1 if the Schedule shows that you have elected Optional Extension 1.

#### 20. Pollutants

- a. for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water;
- b. for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 20 a) and 20 b) shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

#### 21. Product Guarantee

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

#### 22. Product Recall

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

#### 23. Property in Your Physical or Legal Control

for damage to property not belonging to You but in Your physical and legal control other than the property described in 'Additional Extension 1 - Property in Your physical and legal control'.

#### 24. Property Owned by You

for Property Damage to property owned by You.

#### 25. Vehicles

arising out of the ownership, possession or use by You of any Vehicle:

- a. which is registered or which is required under any legislation to be registered; or
- b. in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected),

but exclusions a) and b) shall not apply where:

- i. that compulsory liability insurance or statutory indemnity does not provide indemnity, and
- ii. the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;
- iii. any Vehicle (including any tool or plant forming part of or attached to or used in connection with such Vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Work Site;
- iv. the delivery or collection of goods to or from any Vehicle;
- v. the loading or unloading of any Vehicle;
- vi. any Vehicle temporarily in Your custody or control for the purpose of parking;
- vii. Property Damage caused by or arising out of the movement of any Vehicle which is required to be Conditionally Registered in accordance with the law of any State or Territory in Australia in the event of Your inadvertent and unintentional failure to effect Conditional Registration.

#### 26. Watercraft

arising from the ownership, maintenance, operation or use by You of any Watercraft exceeding ten (10) metres in length, whilst such Watercraft is on, in or under water.

Provided that exclusion 26 shall not apply with regard to claims arising out of:

- a. Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable;
- b. Watercraft owned by others and used by You for business entertainment.

## 27. War, Terrorism, Radioactivity

### a. War

arising directly or indirectly as a result of:

- i. war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not) and/ or civil war; and/or
- ii. rebellion, revolution, insurrection, military and/ or usurped power.

### b. Terrorism

for any:

- i. death, injury, illness, Loss, Damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any act of Terrorism regardless of any other contributing cause or event;
- ii. death, injury, illness, Loss, Damage, liability, 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 the matters set out in paragraph b) i) of this Exclusion.

### c. Radioactive Contamination

for any:

- i. Loss of or Damage to property eligible for insurance by the relevant Nuclear Insurance Pool and/or Association; or
- ii. Loss, cost, Damage, liability or expense directly or indirectly caused by or contributed to by or arising from:
  - 1. ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - 2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - 3. any weapon or device employing atomic or

- nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- 4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

Provided that General Exclusion 27 c) ii) 1) shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

## 28. Listed Human Disease

for any actual or alleged liability directly or indirectly arising out of, related to, or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

Listed Human Disease shall mean:

- a. any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or
- b. any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced

regardless of when the disease is so listed or identified.

## 29 Sanctions

to make any payment where such payment would be in violation of any sanction, prohibition or restriction with which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

## 30 Cyber Liability and Social Engineering

arising out of, related to, or in connection with:

- a. the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or;
- b. Social Engineering Fraud.

### 31 Hazardous Products

for Product Liability arising from Your Products and/or any Products of third parties at market stalls and other sale events that include:

- a. second hand mechanical equipment or electrical goods unless appropriately tested and certified as complying with any applicable legislation or standards;
- b. second hand toys (other than where toys are not for sale but used by You as part of your normal business activities);
- c. medicines which are required to be prescribed by a Medical Professional;
- d. potions, oils, fragrances & beauty products (other than when sold or used in fund raising and kept in the unopened original packaging);
- e. animal feed intended for animals other than domestic pets, herbicides, insecticides or defoliant;
- f. uncooked seafood;
- g. second hand bicycles, helmets and bicycle accessories;
- h. cigarettes, tobacco or cigars of any kind including electronic cigarettes, electronic vaping devices, personal vaporizer, or electronic nicotine delivery system, or any consumable component;
- i. self-balancing motorised boards and scooters;
- j. products that have been dispensed, or have been repackaged into smaller containers for retail sales;
- k. products sold in containers exceeding 5 litres or 5kg;
- l. explosive tools, fireworks, extremely flammable liquid or bulk pool chemicals;
- m. products intended to be used in connection with the navigation, safety or controls of vehicles, aircraft or watercraft;
- n. weapons or firearms of any kind including (but not limited to) knives, swords, firearms, ammunition or any device requiring a license to possess or use due to its dangerous aspects;
- o. parts for motor vehicles;
- p. medical equipment;
- q. model aircraft, drones;
- r. motorised vehicles;
- s. batteries and charging equipment (other when sold or used in fund raising and kept in the unopened original packaging).

Provided that this Exclusion 31 shall not apply to claims for Personal Injury and/or Property Damage where We have agreed to such activities in writing.

### 32 Silica

arising directly or indirectly out of or in connection with any form of silicosis or any other injury or disease of the human body caused by, arising out of, resulting from, or in any way related to the manufacture, mining, use, sale, removal or distribution by any person or organisation of Silica, Silica products, Silica powder, including, nano powder, Silica fibres or Silica dust or the exposure to Silica, Silica products, Silica powder, including, nano powder, Silica fibres or Silica dust or any lung injury, disease or ailment arising out of, caused by, aggravated by, or in any way related to inhalation, consumption or absorption of Silica, Silica products, materials or products containing Silica, Silica powder, including, nano powder, Silica fibres or Silica dust.

### 33 Remotely Piloted Aircraft (RPA)

arising from the use of a Remotely Piloted Aircraft (RPA):

- a. where the operator was required to but did not have a UAV Operator Certificate;
- b. where the operator holds a UAV Controller Certificate and is not flying under the direction of a person who holds a UAV Operator Certificate;
- c. where there is a breach of privacy law resulting from the operation or use of the RPA in non-compliance with any of the remotely piloted aircraft (RPA), as defined in the Civil Aviation Safety Regulations Part 101 or as amended or replaced from time to time.
- d. from the ownership, maintenance, operation or use of an RPA:
  - i. for military or law enforcement purposes;
  - ii. carrying a payload other than fixed photographic, video, surveillance, measuring or monitoring equipment;
  - iii. which is jet propelled;
  - iv. outside the operator's visual line-of-sight as defined in the Civil Aviation Safety Regulations Part 101 or as amended or replaced from time to time;
  - v. with a maximum take-off weight greater than 10kg;
  - vi. for private use;
  - vii. over or under water (sea, ocean, river, lake, coastal, estuaries, dams, creeks, harbour)
  - viii. on mining sites;
  - ix. for security surveillance.

### 34 Perfluoroalkyl And Polyfluoroalkyl Substances (PFAS)

for any:

- a. bodily injury, Property Damage, Personal Injury, Advertising Injury, medical expenses, damages (including but not limited to punitive damages or exemplary damages), loss, penalties, fines, fees, costs or expenses, or any other relief, of any kind whatsoever; and/or
- b. Any Claim, demand, obligation, request, investigation, notice, order, action, settlement, consent decree, agreement, remediation program, suit, or proceeding, of any kind whatsoever, including but not limited to civil, criminal, administrative, or regulatory, brought by or on behalf of a Governmental Authority, natural person, business, organization, or other entity;

actually or allegedly, and directly or indirectly, arising from or out of, caused by, based upon, attributable to, related to, contributed to by, or in any way involving, in whole or in part:

1. PFAS, including but not limited to any actual, alleged, threatened, potential, or suspected:
  - a. Breach of duty, breach of standard of care, act, error, omission, failure to properly act, failure to properly perform any service or professional service, or a violation of any law, statute or regulation in relation to PFAS;
  - b. Inhalation, ingestion, absorption, consumption, discharge, dispersal, handling, testing, flaking, leakage, leaching, friability, migration, seepage, release of, escape of, contact with, exposure to, existence of, or presence of PFAS;
  - c. Use, including but not limited to any mandated, sanctioned, authorized, permitted or suggested use, development, manufacture, production, processing, incorporation, packaging, design, distribution, sale, resale, re-branding, handling, transport, replacement, marketing, or advertising of PFAS or anything containing PFAS; or
  - d. Warnings, notices or instructions regarding PFAS or anything containing PFAS or failure to provide warnings, notices or instructions regarding PFAS or anything containing PFAS;
2. Investigating, abating, testing for, monitoring for, cleaning up, removing, containing, studying, remediating, mitigating, disposing of, treating, detoxifying, neutralizing, or in any way responding to, addressing, or assessing PFAS and/or the actual,

alleged, threatened, potential, or suspected effects or presence of PFAS, whether in the environment, on property, in a human, animal, or any other living or non-living thing or otherwise;

3. Warranties or representations made at any time regarding PFAS or anything containing PFAS, including but not limited to the safety, fitness, quality, durability, performance, toxicity or environmental persistence of PFAS or anything containing PFAS, or warranties or representations made at any time regarding anything described in paragraphs 1. or 2. above.

The foregoing provisions apply:

- a. Regardless of whether any other cause, event, material, substance, compound, good or product (including but not limited to your Products, contributed concurrently or in any sequence to any bodily injury, Property Damage, Personal Injury and Advertising Injury, medical expenses, damages (including but not limited to punitive damages or exemplary damages), loss, penalties, fines, fees, costs or expenses or any other relief, of any kind whatsoever;
- b. To any obligations assumed by You or any other insured under an “insured contract” or any other agreement;
- c. Regardless of whether the “products-completed operations hazard” applies;
- d. Regardless of whether there was a permit, authorization or requirement to use PFAS, incorporate PFAS into your Products or release PFAS into the environment, or whether any use, incorporation or release was legally permissible or in compliance with permissible levels set by a Governmental Authority;
- e. To any workplace exposure or occupational exposure to PFAS or occupational disease actually or allegedly attributable to PFAS; and
- f. To preclude coverage for the entire Claim, demand, obligation, request, investigation, notice, order, action, settlement, consent decree, agreement, remediation program, suit, or proceeding, when only a portion of the foregoing involves or concerns PFAS or anything containing PFAS, even if any other portion would have been covered under this Policy or a duty to defend would have been owed in the absence of PFAS.

In the event of any direct or indirect conflict between the terms of this exclusion and any other definition, form or endorsement attached to the Policy, the conflicting term(s) in this exclusion shall prevail.

The following conditions apply to this Policy.

## 1. Notification of occurrence, claim or suit

You shall give:

- a. written notice (including email or facsimile transmission) to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy;
- b. all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.

## 2. Your duties in the event of an occurrence, claim or legal proceeding

- a. You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim;
- b. You shall use the best endeavours to preserve all property, Products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection;
- c. You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability Insured by this Policy.

## 3. Our rights regarding claims

- a. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving Us any statements, documents or assistance We reasonably require. This may include giving evidence in any legal proceedings.

Berkley Insurance Australia will be responsible for the conduct of all matters for claims up to \$20,000,000 and Berkshire Hathaway

Specialty Insurance for any claims with a proportion in excess of \$20,000,000.

- b. We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - i. the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
  - ii. any lesser sum for which the claim(s) can be settled.
- c. Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for defence costs and supplementary payments:
  - i. recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
  - ii. incurred by Us, or by You with Our written consent, prior to the date of such payment.

## 4. Cross liabilities

This insurance extends to indemnify:

- a. each of the parties comprising the Named Insured; and
- b. each of the Insureds hereunder,

separately in the same manner and to a like extent as though policies had been issued in their separate names.

Provided always that:

- i. each of such parties shall be separately subject to the terms, claims conditions, General Policy conditions, exclusions and definitions of this Policy in the same manner and to a like extent as though separate policies had been issued; and
- ii. any failure by one party to comply with their duty of disclosure or any of the terms or conditions of the Policy shall not prejudice the rights of the remaining parties to indemnity under this Policy (other than where a party had prior knowledge of any such

- failure and did not advise Us of such failure);
- iii. in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

We agree to waive all rights of subrogation or action which We may be entitled to against any party to whom cover under this Policy extends.

## 5. Adjustment of premium

If stated in the Schedule that the premium for this Policy is adjustable and the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may reasonably require as soon as reasonably practicable. The premium for such period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

## 6. Changes to the risk

You must tell Us as soon as reasonably practicable of any alteration to the facts or circumstance in relation to Your Business or Products, if Your interest in the Policy changes or other circumstances change which significantly or materially increase the risk that we have agreed to insure.

We will advise you in writing if We agree to accept the changes and you must pay any additional premium that We may require.

In the event that You do not accept the additional premium You may cancel the Policy in accordance with clause 10. Cancellation.

Where You fail to notify Us as required under this clause, We may be entitled to cancel the Policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where You do not provide such notice before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay the Claim

either in whole or in part or We may reduce Our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

## 7. Inspection and audit

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of any inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which in Our opinion (acting reasonably) are relevant to this Policy.

## 8. Subrogation

We shall be subrogated to the Insured's rights of recovery to the extent of any payment made under this cover section. Each Insured agrees to do everything necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable Us to bring proceedings in the name of the Insured.

## 9. Release

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or Landlord from liability for loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding condition 9. Subrogation of this Policy, We agree to waive all Our rights of subrogation against any such Authority in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

## 10. Cancellation

This Policy may be cancelled by:

- a. You at any time by notifying us in writing. You can do so by giving such notice through Your insurance broker. Where You involves more than one person or party, We will only cancel

this Policy when written agreement to cancel is received from all of such named persons or parties.

We will subtract from any premium You have paid Us, an amount to cover the period that We have already insured You for. We will then return the rest of the premium to You (along with GST and any relevant government charges where this is allowed).

If You have made a claim under this Policy and We have paid or agreed to pay or indemnify You for such claim, no refund will be payable.

- b. Us at any time in any of the circumstances permitted by law by providing You with written notice. We will be entitled to retain premium for the period during which the Policy has been in force.

- replace or repair the products;
- b. maintain and look after other person's or organisation's property and buildings used or occupied by You, in accordance with Your agreement with them;
- c. if Your occupation includes digging below ground at sites away from the Business Premises You must obtain the location of underground services from the owners of the services;
- d. use and store all hazardous materials as required by law.

If You do not take reasonable precautions We may refuse to pay part or all of Your claim in accordance with our rights at law, including under the Insurance Contracts Act 1984 (Cth).

If the premium has been funded by a premium funding company, which holds a legal right over the Policy by virtue of a notice of assignment and irrevocable power of attorney, the return of premium calculated on the basis set out above will be made to the premium funding company.

### 11. Non accumulation

Where a party insured under the Policy is also entitled to indemnity under another insurance policy issued by Us, our maximum limit of liability shall be equivalent to the highest.

### 12. Allocation

Where in any claim, the Insured incurs loss jointly with others, or incurs in relation to a claim an amount consisting of both Loss covered by this cover section and loss not covered by this cover section, then We and the Insured will allocate such amount between covered loss and uncovered loss based upon Our assessment of which parts of the amount fall in and which fall outside this cover section.

### 13. Reasonable Care

You must take reasonable precautions to prevent Personal Injury or Property Damage or Advertising Injury as if You were not covered by this Policy such as:

- a. if You discover Your Products may be defective and the defect may cause a claim under this Policy, at Your expense You must take reasonable steps to restrict, trace, recall, modify,

## Additional Information

### Dispute Resolution

We are committed to providing our clients with a high level of service, empathy with the sector and a reasonable response to all matters.

If you think that we have let you down in any way, or our service is not what you expect, tell Us so that we can help. We are committed to responding to Your complaint fairly.

If you have a complaint:

Step 1: On the spot, if we can!

You can contact us by phone on 02 8045 2580 or by email at [enquiries@communityunderwriting.com.au](mailto:enquiries@communityunderwriting.com.au)

If we can't resolve your complaint immediately, we will commit to responding to your complaint within 15 business days of first being notified of the complaint.

- If We need more information or more time to respond properly to your complaint we will contact you to agree an appropriate timeframe to respond.

Step 2: Internal Dispute Resolution

- If you are not happy with our response, please tell Us in writing. You may escalate it as a dispute and our Internal Dispute Resolution panel (the panel) will review the matter. The panel will be independent of the person who initially considered your complaint.
- The Disputes Resolution Officer will acknowledge your dispute in writing within 2 business days of receipt and will investigate all details of your dispute and will provide you with a written response of the outcome within 15 business days of first being notified of your dispute.
- In some cases we may be unable to reach a conclusion within this timeframe, and may request a later response date. If this occurs, we will keep you informed of progress of the dispute no less than once every 10 days.

Step 3: External Dispute Resolution scheme

Should we be unable to resolve your complaint (including the IDR process referred to above) within 45 days or you are not happy with our response/handling of your complaint at any given time, you can seek an external review via our external dispute resolution scheme, administered by the Australian Financial Complaints Authority (AFCA).

This is an independent national body and its services are free to you. As a member We agree to accept the AFCA's decision.

You can contact the AFCA by:

Mail: Australian Financial Complaints Authority Ltd,  
GPO Box 3, Melbourne, Victoria 3001;  
Phone: 1800 931 678;  
[info@afca.org.au](mailto:info@afca.org.au)  
Facsimile: (03) 9613 6399  
Website: [www.afca.org.au](http://www.afca.org.au)

### Goods and Services Tax (GST)

This insurance Policy has provision for the payment of Goods and Services Tax:

- by You in relation to premiums charged by Us;
- by Us in relation to claims.

You must advise Us of your correct Australian Business Number & taxable percentage. Any GST liability arising from Your incorrect advice is payable by You.

### Retaining Policy Documents

Incidents which may be claimable under this Policy can take many years before they become known to your organisation.

To enable you to prepare the best defence against an incident that may have arisen some years in the past, it is important that you have a document retention and security policy which addresses the effective retention of:

- Your Policy and any endorsements;
- operational and risk management procedures;
- employment records and contracts;
- any published client or other promotional material.