



UNDERWRITING

# 100 Plan Policy Wording

100.01	101.11	102.18	103.45	107.15	100.24	101.34	102.06	102.14	102.02	102.05	102.06
05/14	06/20	04/16	10/20	06/13	04/16	03/21	05/14	06/20	04/16	10/20	06/13
4.50	6.25	4.60	5.00	2.00	3.75	3.75	4.50	6.25	4.60	5.00	2.00
60.51	55.49	75.09	68.38	98.15	99.21	93.01	24.43	15.76	11.48	10.41	2.95
0.48	0.33	-0.54	0.18	0.05	0.00	0.00	0.59	0.60	0.44	0.34	0.20

Representative stocks from each major market  
 \* Diff between conventional and IL bond. † Local currency convention, for UK Gilts inflation factor is applied to p

## COMMODITIES



104.90	107.45	99.27	104.13	104.21	105.14	105.27	105.27	105.27	105.27	105.27	105.27
04/13	05/14	06/14	12/20	02/13	04/21	03/12	04/13	05/14	06/14	12/20	02/13
2.30	5.50	6.75	5.00	4.00	0.00	5.00	2.30	5.50	6.75	5.00	4.00
98.20	101.90	111.46	114.67	105.75	95.71	102.43	3.26	3.24	3.31	3.32	3.00
-0.05	0.00	-0.04	-0.01	-0.08	0.00	-0.00	-0.26	-0.26	-0.12	-0.07	-0.02

Uranium	55.25	nc	
Carbon Emissions † Jun	€16.58	-0.12	
Diesel (French)	948.50	-65.50	
Unleaded (95R)	1099.00	-36.00	
<b>Base Metals (LME 3 Month)</b>			
Aluminium	2685.50	-83	
Aluminium Alloy	2435.00		

## Cover Provided

In return for the payment of premium shown in the **Schedule**, **We** agree to insure **You**, subject to the terms and conditions contained in or endorsed on to this **Policy** for:-

- (a) any **Claim** concerning the **Insured Business** first made and notified to the **Insurers**; or
- (b) any **Circumstance** notified to the **Insurers**;

in the **Territory** and during the **Period of Insurance** and in accordance with the terms of this **Policy**.

**PLEASE READ THIS POLICY CAREFULLY**

SPECIMEN

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## Definitions

In this **Policy**, words in the singular shall also include the plural and vice versa and words in the masculine shall also include the feminine. Any word or phrase printed in **bold** typeface shall have the following meaning;

- A. **Administrator** means Opus Underwriting Limited, whose details are shown in the **Schedule**.
- B. **Adverse Costs** means the legal costs incurred by a third party in relation to any **Authorised Proceedings**, which the **Insured** is or may become liable to pay pursuant to a costs order made in such **Authorised Proceedings** but not including any liability under any court order which is made against the **Insured** due to its unreasonable or unacceptable behaviour.
- C. **Assertion Costs** means, under **Section 1B, OPUS Sabre (Infringement Assertion)** or **Section 1C, (Counterclaims)**, any legal fees, expenses and disbursements properly and reasonably incurred in **Authorised Proceedings** by the **Insured** in pursuing any **Claim**, including costs and expenses of external expert witnesses. For the avoidance of doubt, **Assertion Costs** do not include any taxes or charges (such as VAT) which are recoverable by the **Insured**.
- D. **Authorised Proceedings** means legal proceedings in respect of a **Claim** brought within the **Territory** and during the **Period of Insurance**, in relation to which the **Insured** is represented by a **Legal Representative**, in a **Relevant Court** or a **Settlement**, which **Insurers** have approved under this **Policy**.
- E. **Circumstance** means any actual or alleged fact or matter, act, omission, dispute, knowledge or suspicion of actual infringement, any notification made alleging infringing **Intellectual Property** or offer to license or other event which the **Insured** or the **Responsible Officer** becomes aware of, that may give rise to a **Claim**.
- F. **Claim** means

**Pursuant to Section 1A - OPUS Sentry: - Infringement Liability**

any civil judicial proceeding, cause of action, action, litigation, arbitration or other alternative dispute resolution, demand, allegation, offer to license, or request to cease-and-desist directed against the **Insured** in relation to which the **Insured** may be liable for **Adverse Costs, Damages** and/or injunctive relief, including any appeal therefrom, which the **Insured** requests **Insurers** to provide cover under this **Policy**; or

**Pursuant to Section 1B - OPUS Sabre (Infringement Assertion)**

any civil judicial proceeding, cause of action, action, litigation, arbitration or other alternative dispute resolution, demand, allegation, offer to license, or request to cease-and-desist made by the **Insured** against a third party and/or injunctive relief, including any appeal therefrom, which the **Insured** requests **Insurers** to provide cover under this **Policy**; or

**Pursuant to Section 1C (Counterclaims)**

any civil judicial proceeding, cause of action, action, litigation, arbitration or other alternative dispute resolution, demand, allegation, offer to license, or request to cease-and-desist directed against the **Insured** in relation to which the **Insured** may be liable for **Adverse Costs, Damages** and/or injunctive relief or which relates to the validity or enforceability of any of the **Insured's Intellectual Property** including any appeal therefrom, which the **Insured** requests **Insurers** to provide cover under this **Policy**.

All **Claims** (including **Counterclaims**) arising out of the same originating cause, event or **Circumstance** shall be regarded for all purposes as constituting one **Claim**.

- G. **Co-Insurance** means the percentage, specified in the **Schedule**, of **Adverse Costs, Assertion Costs, Damages** and/or **Defence Costs**, which the **Insured**, following payment of the **Excess**, shall pay as a contribution towards the cost of any one **Claim** as such **Adverse Costs, Assertion Costs, Damages** and/or **Defence Costs** (as the case may be) are incurred.

- H. **Connected party** means any entity controlled by or controlling the **Insured** or under common control with the **Insured** and for these purposes "control" means the ability to direct, manage, oversee and/or restrict the affairs, business or assets of an entity.
- I. **Counterclaim** means any **Claim** of the type set out in **Section 1C** of this **Policy**.
- J. **Damages** means any sums payable by the **Insured** in respect of actual or compensatory damages, past royalties or account of profits, or other restitutionary payments awarded by a **Relevant Court** (inclusive of any interest) or agreed as part of a **Settlement** approved by the **Insurers**. For the avoidance of doubt, **Damages** do not include **Adverse Costs** or **Defence Costs**.
- K. **Defence Costs** means, under **Section 1A, OPUS Sentry (Infringement Liability)** or under **Section 1C (Counterclaims)**, any legal fees, expenses and disbursements properly and reasonably incurred in **Authorised Proceedings** by the **Insured** in defending any **Claim**, including costs and expenses of external expert witnesses. For the avoidance of doubt, **Defence Costs** do not include **Adverse Costs** or **Damages**, any taxes or charges (such as VAT) recoverable by the **Insured**.
- L. **Employee** means any individual who is/was employed by the **Insured** or is/was subject to any other contract of service or apprenticeship or training scheme with the **Insured**.
- M. **Excess** means the amount specified in the **Schedule** which the **Insured** shall pay towards the cost of any one **Claim**. This amount will not erode the **Limit of Liability**.
- N. **Insured/You/Your** means the individual person or persons, company, partnership, joint venture, firm, trust, association, or organisation named in the **Schedule** and at the written request of the entity or entities so named in the said **Schedule**, **Employees** while acting on behalf of the **Insured**.
- O. **Insured Business** means the business activities noted as the detailed description of the **Insured** declared to **Insurers** in the Statement of Fact and listed in the **Schedule** but only in so far as the business is confined to the provision of the Insured product and/or Insured Intellectual Property.
- P. **Insured Intellectual Property** means the **Intellectual Property** owned by the **Insured**, or for which the **Insured** has the legal right to use, underpinning the **Insured Product**.
- Q. **Insured Product** means any product or service of the **Insured** (including without limitation any process by which such product is made or such service is provided) which has been declared to **Insurers** in the Statement of Fact and listed in the **Schedule** but excluding any other separate product or service which may be ancillary to or dependant on the **Insured Product**, if not specifically declared to **Insurers** in the Statement of Fact.
- R. **Insurers/We/Us** means certain Lloyd's Syndicates named in the **Schedule**.
- S. **Intellectual Property** means any patents and rights in inventions, trade marks, service marks, business or trade names (including internet domain names and email address names), rights in get up or trade dress, design rights, registered designs, utility models, copyrights (including copyrights in computer software), database rights, semi-conductor topography rights and rights in trade secrets and other confidential information, know-how, and all other intellectual and industrial property rights of any kind in any part of the world, whether registered or not or capable of registration or not.
- T. **Limits of Liability** means the total limit of the **Insurers'** liability under this **Policy** as set out in the **Schedule**.
- U. **Legal Representative** means a lawyer, advocate, barrister, patent or trade mark agent or other appropriately qualified person approved in writing by **Insurers** (such approval not to be unreasonably withheld or delayed) and appointed to act on behalf of **Insured** in accordance with the terms and conditions of this **Policy**.

- V. **Period of Insurance** means the period specified in the **Schedule**.
- W. **Policy** means this **Policy** together with the **Schedule** and any endorsement, extension or condition agreed between the parties, any Statement of Fact or renewal Statement of Fact and any other document expressed to be incorporated by reference.
- X. **Recall Costs** means under **Section IA, OPUS Sentry:- Infringement Liability**, costs reasonably and properly incurred by the **Insured** in the inspection, public notifications, transportation, additional manpower required in the collection, withdrawal and destruction of recalled products of the **Insured**.
- Y. **Relevant Court** means any formally constructed court of competent jurisdiction or equivalent tribunal (including without limitation an arbitral tribunal, national or regional patent or trade mark offices, the Office for Harmonization in the Internal Markets (OHIM) or the European Patent Office, the World Trade Organisation or the World Intellectual Property Organisation) with authority to issue legally binding judgments, awards or orders within the **Territory**, or any independent professional arbitrator or mediator approved by **Insurers**.
- Z. **Responsible Officer** means the individual who is designated by the **Insured** as having responsibility for giving notice to **Insurers** of any **Claim** or **Circumstance** under this **Policy**, as per the **Schedule** (or any designated alternative).
- AA. **Settlement** means a legally binding written agreement settling or resolving a **Claim**.
- BB. **Schedule** means the **Schedule** attached to and forming part of this **Policy**.
- CC. **Section** means any **Section** of this **Policy**.
- DD. **Territory** means the countries and territories specified in the **Schedule**.

## IMPORTANT INFORMATION:

The **Policy**, the **Schedule** and the Statement of Fact shall be construed as one document which has relied on the statement of fact.

The **Policy** sets out the conditions of the contract between **You** and **Us**. Please read the whole document carefully and keep it in a safe place.

It is important that **You**:

- Check the information contained in the **Schedule** is accurate. See the “Information **You** have given **Us**” Section
- Comply with all **Your** duties under this **Policy** and the “Things **You** must do” in the event of a **Claim**.

Failure to do these things could result in **Your Claim** not being paid or reduce the amount payable or **We** could treat this **Policy** as though it never existed.

By virtue of this **Policy** having been issued, **You** will be entitled to additional benefits **We** offer through our

### OPUS PASSPORT

Please refer to an addendum to **Your Schedule** to see what benefits apply to **You**.

## About your insurer

This **Policy** is administered by Opus Underwriting Limited on behalf of, and has been underwritten by, certain **Insurers** at Lloyd’s who are authorised and regulated by the Financial Conduct Authority and the Prudential Regulation Authority with the FIRM number 2022761.

Opus Underwriting Limited is based in London and an appointed representative of Avantis AR Services, a company authorised and regulated by the Financial Conduct Authority and the Prudential Regulation Authority under firm reference number 505452 to carry on insurance distribution activities. OPUS Underwriting Limited is authorised under firm reference 648810.

## Information you have given us

In deciding to accept this **Policy** and in setting the terms and premium, **We** have relied on the information **You** have given **Us**. **You** must take care when answering any questions **We** ask by ensuring that all information provided is accurate and complete.

If **We** establish that **You** deliberately or recklessly provided **Us** with false or misleading information **We** will treat this **Policy** as if it never existed and decline all **Claims**.

If **We** establish that **You** carelessly provided **Us** with incorrect or incomplete information that **We** have relied upon in accepting this **Policy** and setting its terms and premium **We** may:

- treat this **Policy** as if it had never existed and refuse to pay all **Claims** and return the premium paid. **We** will only do this if **We** provided **You** with insurance cover which **We** would not otherwise have offered;
- amend the terms of **Your Policy**. **We** may apply these amended terms as if they were already in place if a **Claim** has been adversely impacted by **Your** carelessness;
- charge **You** more premium for **Your Policy** or reduce the amount **We** pay on a **Claim** in the proportion the premium **You** have paid bears to the premium **We** would have charged **You**; or
- cancel **Your Policy** in accordance with the “Cancelling this insurance” section.

**We** or **Your broker** will write to **You** if **We**:

- intend to treat this **Policy** as if it never existed; or
- need to amend the terms of **Your Policy**; or
- require **You** to pay more premium for **Your Policy**.

## Notifying us of any changes

**You** must notify **Your broker** as soon as practicable if **You** become aware of any material changes in the information **You** have provided to **Us** which happens before or during any **Period of Insurance**. All notifications must be made in writing, by email, or by telephone.

Changes to the information **You** have provided could result in **You** having to pay an additional premium or **Us** amending the terms of **Your Policy**.

## Cancelling this insurance

**You** can cancel this **Policy** at any time by notifying **Your broker**.

**We** can cancel this **Policy** by giving **You** fourteen (14) days' notice in writing. **We** will only do this for a valid reason (examples of valid reasons are as follows):

- Non payment of premium
- A change in risk occurring which means that **We** can no longer provide **You** with insurance cover
- Non-cooperation or failure to supply any information or documentation **We** request
- Threatening or abusive behaviour or the use of threatening or abusive language

## Refund of premium

This **Policy** has a cooling off period of fourteen (14) days from either:

- the date **You** receive this **Policy** documentation; or
- the start of the **Period of Insurance**

whichever is the later.

If this **Policy** is cancelled by **You** or **Us**, provided **You** have not made a **Claim**, **You** will be entitled to a refund of the premium paid, subject to a deduction for any time for which **You** have been covered. This will be calculated on a proportional basis. For example, if **You** have been covered for six (6) months, the deduction for the time **You** have been covered will be half the annual premium.

If **You** cancel this **Policy** outside the cooling off period, there will be an additional charge, as stated in the **Schedule**, to cover the cost of providing the **Policy**.

Any additional premium due to **Us** during the **Period of Insurance** for additional risks will be retained by **Us** in full.

If a **Claim** is paid, whether by **Settlement**, compromise or otherwise, no return of premium will be allowed.

Cancellation of the **Policy** by **Us** does not affect the treatment of any **Claim** arising under the **Policy** in the period before cancellation.

## Fraudulent claims

If **You**, or anyone acting on **Your** behalf, make a **Claim** knowing it to be false or fraudulent, this **Policy** will be invalid, with effect from the time of the fraudulent act. This means **We** will not pay the fraudulent or false **Claim**, or any subsequent **Claim**, and may keep any premium paid.



## How to make a complaint

Opus underwriting Limited aims to provide an exemplary professional service to its customers.

Should **You** have any questions or concerns about **Your Policy** or the handling of a **Claim You** should, in the first instance, contact **Your** broker.

If **You** wish to make a complaint contact Opus Underwriting Limited by writing to:

The Managing Director  
OPUS Underwriting Limited  
Castle Court  
41 London Road  
Reigate, Surrey  
RH2 9RJ

If at any time you have any query or complaint regarding your contract of insurance, you should in the first instance refer to your insurance broker or other intermediary or advisor, if any. If you are not satisfied with the way a complaint has been dealt with, you may refer it to:

Lloyd's Australia Limited,  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

Phone 02 8298 0783  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

Details of Lloyd's complaints procedures are set out in a leaflet "**Your** Complaint – How **We** Can Help" available at [www.lloyds.com/complaints](http://www.lloyds.com/complaints) and are also available from the above address.

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

Telephone: 1800 931 678

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

Post: GPO Box 3 Melbourne VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

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

If **You** remain dissatisfied after Lloyd's has considered **Your** complaint, **You** may have the right to refer **Your** complaint to the Financial Ombudsman Service.

Financial Ombudsman Service  
Exchange Tower  
Harbour Exchange Square  
London  
E14 9SR

Telephone: 0800 023 4567 or 0300 123 9123  
Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)  
Website: [www.financial-ombudsman.org.uk/consumer/complaints.htm](http://www.financial-ombudsman.org.uk/consumer/complaints.htm)

If **You** are unsure whether FOS will consider **Your** complaint, please contact them directly for advice.

The service FOS provides is free and impartial and contacting them at any stage does not affect **Your** legal rights to take action.

## Compensation

Lloyd's **Insurers** are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if a Lloyd's insurer is unable to meet its obligations to **You** under this **Policy**.

If **You** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this **Policy**. Further Information about the Scheme is available from the Financial Services Compensation Scheme (10th Floor, Beaufort House, 15 St. Botolph Street, London EC3A 7QU) and on their website: [www.fscs.org.uk](http://www.fscs.org.uk).

SPECIMEN



## Section 1. What is covered

### A: OPUS Sentry: Infringement Liability

The **Insurers** shall cover the **Insured** in respect of **Adverse Costs, Damages** and **Defence Costs** incurred in **Authorised Proceedings** arising from;

- i. an actual or alleged infringement of a third party's **Intellectual Property** by the **Insured's** product or services.
- ii. passing off (including but not limited to unfair competition) alleged to arise by virtue of the **Insured's** sale or marketing of products or services.
- iii. an actual or alleged infringement of a third party's **Intellectual Property** by the **Insured's** licensing of the **Insured's** own **Intellectual Property**.

#### Extensions (if included in the schedule)

##### A1 Directors Infringement

**Insurers** agree to cover **You** for **Adverse Costs, Damages** and **Defence Costs** incurred in **Authorised Proceedings** by any director or officer of the **Insured** in respect of an assertion of infringement of third party **Intellectual Property** where the director or officer is joined as a co-defendant in **Authorised Proceedings**.

This **Policy** does not provide cover to a director or officer of the **Insured** in respect of their obligations or duties as directors or officers nor in relation to any cover sought by any stakeholders of the **Insured** which directly names the director or officer of the **Insured**, regardless of whether the cover sought arises out of any alleged breach of any third party's **Intellectual Property**.

##### A2. Obligations to Contracting Parties

**Insurers** agree to cover the **Insured** for **Adverse Costs, Damages** and **Defence Costs** incurred in **Authorised Proceedings** by any contracting party (not being a **Connected Party**) covered by the **Insured** in a written contract, in respect of an actual or alleged infringement of a third party's **Intellectual Property** arising from the contracting party's manufacture, sale, distribution or use of the **Insured's** product or services.

A maximum of three contracts will be covered under this **Section**. Cover provided by **Insurers** to the **Insured's** contracting party shall be on the proviso that the **Insured** has sole right to appoint a **Legal Representative** and handle the **Authorised Proceedings** and any **Settlement** thereof.

This **Policy** does not cover:

- A2.1 Any **Claim** arising from or relating to any actual or alleged breach, repudiation, termination or suspension of any written contract, licence or other agreement by the **Insured**.
- A2.2 Any **Claim** arising from or relating to the amount or timeliness of paying royalties or licence fees to any third party.
- A2.3 Any payroll related costs, fees, costs including witness attendance costs that are incurred by any person (including any external consultants) representing the **Insured's** contracting party as an **Employee**, agent, director & officer or in-house attorney of such contracting party.

##### A3. Product Infringement Recall

Following **Authorised Proceedings** where it is adjudged that the **Insured** has or is likely to have infringed a third party's **Intellectual Property**, **Insurers** agree to extend cover for **Recall Costs** incurred in relation to the retrieval,

withdrawal from sale or distribution, recovery of possession or delivery up for destruction of any of the **Insured's** products or services where such action is ordered by a **Relevant Court** or is undertaken by the **Insured** to mitigate loss following receipt of legal advice from a **Legal Representative**.

This **Policy** does not cover any additional **Recall Costs** that arise as a result of failure by the **Insured** to comply with any judgment imposed by a **Relevant Court** or part of a **Settlement** in **Authorised Proceedings**.

## B: OPUS Sabre: Infringement Assertion

The **Insurers** shall cover the **Insured** in respect of **Adverse Costs and Assertion Costs** incurred in **Authorised Proceedings** arising from;

- i. an actual or alleged infringement of the **Insured's Intellectual Property**; or
- ii. passing off (including but not limited to unfair competition);

provided that the **Insured** is financially self-sustaining through capital funding or auditable revenues.

This **Policy** will not cover where the **Insured Business** routinely derives revenue from the sale or licensing of the **Insured's Intellectual Property**:-

- (a) where such sales or licences generally follow the notification or assertion of **Intellectual Property** by or on behalf of the **Insured**; or
- (b) where the **Insured** is reliant on enforcing or threatening to enforce its **Intellectual Property** as a means of sustaining or developing its business.

**Extensions** (if included in the schedule)

### B1. Contractual disputes

**Insurers** agree to extend cover for **Adverse Costs** and **Assertion Costs** incurred in **Authorised Proceedings** brought, for breach of a written agreement against a third party with whom the **Insured** has entered into an agreement relating to the manufacture, distribution, sale, promotion or use of the **Insured's** products or services or relating to the exploitation of the **Insured's Intellectual Property** by such third party.

This **Policy** does not cover any **Claim** arising out of a breach by the third party which is as a consequence of the **Insured's** prior failure to comply with any of the terms of an agreement.

## C. Counterclaims

**Insurers** agree to extend cover, as an integral part of **Authorised Proceedings**, to include a **Counterclaim** (in direct response to a **Claim**) arising;

- i. under **Section 1A OPUS Sentry:- Infringement Liability** relating to non-infringement, invalidity and/or unenforceability of the third party's **Intellectual Property** asserted against the **Insured** and/or for unjustified threats to bring infringement proceedings in respect of its **Intellectual Property** made by the third party; or
- ii. Under **Section 1B OPUS Sabre:- Infringement Assertion** relating to non-infringement, invalidity and/or unenforceability of the **Insured's Intellectual Property** and/or the **Insured's** infringement of the third party's **Intellectual Property** and/or for unjustified threats to bring infringement proceedings in respect of its **Intellectual Property** made by the third party.

No other type of **Counterclaim** of any nature shall be covered by this **Policy**.

## Section 2. Limits of Liability

The total liability of **Insurers** under this **Policy** in respect of the **Claims** below:

### OPUS Sentry – Infringement Liability

- (i) **Adverse Costs** in respect of any one **Claim**
- (ii) **Damages** in respect of any one **Claim**
- (iii) **Defence Costs** in respect of any one **Claim**
- (iv) **Recall Costs** in respect of any one **Claim**
- (v) **Counterclaims** in respect of any one **Claim**

### OPUS Sabre – Infringement Assertion

- (i) **Adverse Costs** in respect of any one **Claim**
- (ii) **Assertion Costs** in respect of any one **Claim**
- (iii) **Counterclaim** in respect of any one **Claim**

shall not exceed, in aggregate for all **Claims** made during the **Period of Insurance**, the **Limits of Liability**.

Subject to all the provisions hereof;

- a) the payment of the **Excess**, specified in the **Schedule**, shall not erode the **Limit of Liability** specified in the **Schedule**;
- b) the payment of the **Co-Insurance**, specified in the **Schedule**, shall erode the **Limit of Liability** specified in the **Schedule**; and
- c) the inclusion or addition hereunder of more than one **Insured** shall not operate to increase the **Insurers' Limit of Liability** beyond those specified in the **Schedule**.

**Adverse Costs, Damages, Defence Costs** and/or **Assertion Costs** paid by the **Insurers** under this **Policy** shall be charged against, and shall therefore reduce and may completely exhaust, the **Limits of Liability** specified in the **Schedule**.

## Section 3. What is not Covered

**Insurers** shall have no liability under this **Policy** for:

1. Any **Claim** not involving the **Insured Business** or the business of a party covered under this **Policy**;
2. Any criminal proceedings;
3. Any **Excess** and/or **Co-insurance** payable by the **Insured**;
4. Any **Claim** or **Circumstance** arising outside the **Territory**;
5. Any fine, penalty, punitive, exemplary or enhanced damages or other non-compensatory damages awarded in respect of wilful or knowing infringement and any future royalties or any other compensation applying after the date of any **Settlement** or an order or judgement of any **Relevant Court** and including any subsequent proceedings relating to the enforcement, or otherwise, of any such fine, penalty, damages and/or future royalties;
6. Any payroll related costs, fees, costs including witness attendance costs that are incurred by any person (including any external consultants) representing the **Insured** as an **Employee**, agent, director & officer or in-house attorney of the **Insured**;
7. Any **Claim** arising out of any fact or matter, act, omission, **Circumstance** or dispute existing or occurring before the inception of the **Policy** which the **Insured** or the **Responsible Officer** knew or ought reasonably to have known was likely to give rise to a **Claim**;
8. Any **Claim** arising out of any litigation pending at, or completed prior to, the inception of the **Policy** including any continuation of such litigation after inception of the **Policy**;
9. Any **Claim** arising from:
  - i. personal or bodily injury, mental anguish or illness, disease or death;
  - ii. loss of, loss of use, destruction of, or damage to, property;
  - iii. alleged breach of any professional duty;
  - iv. alleged breach of any duty owed as a director or officer of the **Insured**;
  - v. any liability of whatsoever nature;  
caused by or contributed to by or arising from:
    - I. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
    - II. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
10. Any **Claim** arising between two or more persons named as **Insured** under this **Policy** or which is made on behalf of or at the request, direction or assistance of either **Insured**;
11. Any costs incurred by the **Insured** in, or associated with, the procurement, prosecution, maintenance, general monitoring or collation of any **Intellectual Property**.

12. Any **Claim** relating to a pre-grant opposition or observation made to any national or international intellectual property office to prevent the granting of or restrict the scope of **Intellectual Property** prior to grant;
13. Any **Claim** caused or contributed to by any actual or alleged dishonest, fraudulent, criminal, reckless, malicious or wilful act or omission by the **Insured** including the knowing disregard of another's **Intellectual Property** by the **Insured**;
14. Any **Claim** in respect of an action brought by or against any government body, trade regulator or customs authority (whether regional, national, state or federal), including, but not limited to, a breach of anti-trust, restraint of trade, taxation or trading standards legislation;
15. Any **Claim** involving the **Insured's** ownership or use of a **Domain Name** where the **Insured** did not seek to employ the Internet Corporation for Assigned Names and Numbers (ICANN) dispute resolution procedure or an equivalent domain name dispute resolution procedure, where such dispute resolution procedures are available.
16. Any costs awarded under Civil Procedure Rule 63.26(2) or other rule applied where the **Insured** has behaved unreasonably or unacceptably.
17. The costs of any **Counterclaim** not being a **Counterclaim** of the type described in **Section 1.C (Counterclaims)** of this **Policy**.

SPECIMEN

## Section 4. How to make a claim

This is a claims made and reported policy. This **Policy** applies only to any **Claim** first made and reported to the **Insurers** during the **Period of Insurance** subject to all of its terms, conditions, limitations and exclusions. Please note the premiums should have been received by **Insurers** before a claim is paid under the **Policy**.

### Things you must do:

It is imperative that, in the event of a **Circumstance** which may give rise to a **Claim** under this **Policy**, **You** report the matter as soon as possible, via **Your** brokers, to OPUS Underwriting Limited. DO NOT proceed to appoint any professional advisors to act for **You** before reporting the matter to OPUS Underwriting Limited. Please refer to the **Claims** conditions under the **Policy**.

#### 4.1 Notification

The **Insured** shall give to **Insurers** notice in writing when the **Insured** becomes aware, during the **Period of Insurance**, of a **Circumstance** which may give or has given rise to a **Claim** involving the **Insured** as soon as practicable (but in no event later than thirty (30) days after the end of the **Period of Insurance**) and within such time so as not to prejudice the **Insurers'** position, and allow the **Insurers** reasonable time to consider the **Claim**.

For the purpose of giving notice under this condition, only knowledge of a **Claim**, or any **Circumstance** possessed or discovered by the **Insured** or the **Responsible Officer** shall be deemed knowledge possessed or discovered by the **Insured**.

If the **Insured** first becomes aware of a **Circumstance** which may give rise to a **Claim** during the **Period of Insurance** and the **Insured** gives written notification to **Insurers** during the **Period of Insurance** of such **Circumstance**, (or within thirty (30) days after the end of the **Period of Insurance**) giving full details of the **Circumstance**, including the opponent's details the identity of the potential claimant(s), and a statement regarding how and when the **Insured** first became aware of such **Circumstance**, then any action for which a **Claim** is subsequently made shall be deemed to have been made at the time written notification was first given to **Insurers**. In the event that the **Policy** is cancelled by **Insurers** or the **Insured** during the **Period of Insurance** no such days of grace will apply, in accordance with the "Cancelling this insurance" section.

If notice is given by the **Insured** but not in accordance with this clause, then the **Insured's** rights to recover under this **Policy** in respect of such matter shall be prejudiced only to the extent that the **Insurers** establish they were prejudiced in the handling of the **Claim** as a consequence of such non-compliance. The **Insured** shall provide all relevant information reasonably requested by **Insurers** in order to establish whether they have been prejudiced or not.

A **Claim** shall be considered to be reported to the **Insurers** when notice is first received by the **Administrator**.

The **Insurers'** liability for **Adverse Costs**, **Assertion** or **Defence Costs** and/or **Recall Costs** and **Damages** (as applicable) under this **Policy** shall be retracted and shall be held to have been expunged where, following notification by the **Insured** to the **Insurers** of a **Circumstance**, the **Claim** or **Circumstance** is dormant for a period of 24 months following the **Insured's** notification to the **Insurers**.

#### 4.2. Selection of Legal Representative

- a) After consultation between the **Insured** and the **Insurers** a **Legal Representative** shall be appointed to represent the **Insured** in **Authorised Proceedings**. Under no circumstances shall the **Insured** engage a person as a **Legal Representative** in respect of a **Claim** without prior written approval from **Insurers**. If in the course of the **Authorised Proceedings**, the **Insured** wishes to appoint an alternative **Legal Representative** to act in the further conduct of the **Authorised Proceedings**, the **Insured** must first obtain **Insurers'** prior written consent (such consent not to be unreasonably withheld or delayed).



- b) If in the course of the **Authorised Proceedings**, the **Legal Representative** wishes to instruct counsel, **Insurers'** prior written consent must be obtained (which will not be unreasonably withheld or delayed). In order to request such consent, the **Legal Representative** must submit counsel's name to **Insurers** together with an explanation of the necessity for such action.

#### 4.3. Consent

- a) **Insurers** must have given consent in writing to provide cover for a **Claim** before any sum in respect of such **Claim** can be paid (such consent not to be unreasonably withheld or delayed).
- b) The **Insured** must provide **Insurers**, via the **Administrators**, with all relevant information that they need in order to evaluate the **Claim**.
- c) There must be good prospects that any **Claim** and the consequent **Authorised Proceeding** will be resolved in the **Insured's** favour.
- d) The benefits likely to be obtained from undertaking the **Authorised Proceedings** must be materially in excess of the anticipated **Assertion** or **Defence Costs** and/or **Recall Costs** likely to be incurred.

Following acceptance of any **Claim** in accordance with Clause 4.3 **Insurers** must provide their consent in writing before any **Assertion** or **Defence Costs** and/or **Recall Costs** are incurred by the **Insured** (such consent not to be unreasonably withheld or delayed).

#### 4.4 Withdrawal of Consent

**Insurers** may withdraw the consent granted at Clause 4.3. if:

- a) there are no longer reasonable grounds for continuing the **Authorised Proceedings** or there are no longer good prospects of their being resolved in the **Insured's** favour.
- b) the **Insured** acts wrongly or unreasonably in dealing with the **Authorised Proceedings** and such conduct prejudices the prospects of their being resolved in the **Insured's** favour.
- c) the **Legal Representative** ceases to represent the **Insured** in the **Action**.
- d) the **Insured** fails to advise **Insurers** immediately of any third party offer to settle the whole or any part of the **Authorised Proceedings** whether made orally or in writing or of any payment into court or of any oral or written offer made by the **Insured** or their **Legal Representative** to settle the **Authorised Proceedings** in whole or in part to include, but not limited to "without prejudice" correspondence and payments into court.
- e) the **Insured** refuses to accept any third party offer to settle the **Authorised Proceedings** or to accept any payment into court, the acceptance of either of which is recommended by the **Legal Representative and Insurers**.
- f) the **Insured** becomes insolvent and is unlikely to receive or retain any benefit by continuing the **Authorised Proceedings**, even if successful. The **Insured** shall be deemed insolvent upon the appointment in relation to the **Insured** of a trustee in bankruptcy, receiver, administrator, administrative receiver, liquidator, or equivalent office holder or if the **Insured** is unable to pay its debts as they fall due within the meaning of the Bankruptcy Act 1996 (or equivalent) or becomes subject of a voluntary arrangement or has passed a resolution for its winding up or has anything similar or analogous happen in relation to it.

#### 4.5 Continued Obligations

- a) Where under Clause 4.4 it is determined that the **Insured** no longer has reasonable grounds for continuing the **Authorised Proceedings** or that there are no longer good prospects of their being resolved in the **Insured's** favour or that the anticipated **Assertion** or **Defence Costs** likely to be incurred in relation to the continuation of the **Authorised Proceedings** materially exceed the benefits likely to be obtained from such **Authorised Proceedings**, the **Insurers** will consent to providing support to the **Insured** in reaching **Settlement** of the **Claim**.
- b) If **Insurers** do withdraw their consent, they shall, notwithstanding such withdrawal, pay for all **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** (as would have been applicable under the **Policy**) to which the **Insured** is entitled under this **Policy** up to the date of such withdrawal.
- c) If, notwithstanding **Insurers'** refusal or withdrawal of consent, the **Insured** elects to commence or continue with the **Authorised Proceedings** and is successful, **Insurers** shall then pay all **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** (as would have been applicable under the **Policy**) in accordance with this **Policy** as if their consent had been given in the first instance, provided that **Insurers'** refusal or withdrawal of consent was under the provisions of Clause 4.4 a) above.
- d) If the **Insured** withdraws the **Claim** or ceases or discontinues the **Authorised Proceedings** without **Insurers'** consent, the **Insured** shall pay applicable **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** that arise in relation to such **Authorised Proceedings**.
- e) In relation to **Authorised Proceedings**, the **Insured** shall not admit or assume any liability or consent to any judgment without the prior written consent of the **Insurers** (such consent not to be unreasonably withheld or unreasonably delayed or withdrawn).

#### 4.6 Appeal

**Insurers'** prior written consent must first be obtained (such consent not to be unreasonably withheld or delayed) by the **Insured** in relation to any appeal against the decision of a **Relevant Court** handed down in relation to **Authorised Proceedings**, which the **Insured** wishes to make. In order to obtain such consent, the **Insured** must submit to the **Insurers** a written statement from specialist IP counsel setting out the basis for such counsel's belief that the appeal should be made, as soon as possible and within such time so as not to prejudice the **Insurers'** position, and allow the **Insurers** reasonable time to consider the merits of such proposed appeal.

#### 4.7 Regular Review

The **Insured** must instruct the **Legal Representative** to report to the **Insurers**, via the **Administrators**, regarding the case every 60 days and in any event as soon as reasonably practicable following key events in the case including without limitation, delivery of pleadings, directions orders made, close of disclosure, exchange of witness statements, expert reports and skeleton arguments. In addition the **Insurers** may review the case periodically with the **Legal Representative**.

#### 4.8 Obligation to Disclose

- a) The **Insured** must provide the **Legal Representative** with all relevant information and reasonable assistance required in relation to the **Authorised Proceedings**. The **Insured** must execute all documents as necessary and attend any meetings or conferences when reasonably requested to do so by the **Legal Representative**.
- b) **Insurers** shall be entitled to obtain from the **Legal Representative** any information, document or advice relating to the **Authorised Proceedings** whether or not privileged. The **Insured** may, to the extent permitted

by law and/or subject to any protective order and/or any duties of confidentiality and/or common interest agreements, give instructions to the **Insured** so as to protect the privilege in any documents supplied.

- c) The **Insured** will at their own cost promptly:
- (i) render all reasonable assistance to the **Insurers** and co-operate in relation to any **Claim** and **Authorised Proceedings** relating to such **Claim** and the assertion of indemnification and contribution rights;
  - (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Claim** under this **Policy**;
  - (iii) give such information and assistance to the **Insurers** as the **Insurers** may reasonably require to enable them to investigate any **Claim** (including without limitation any statements made in the Statement of Fact or information supplied by the **Insured** in connection with the **Policy**) or determine the **Insurers'** liability under this **Policy** where possible.

#### 4.9 Conduct

The **Insured** must take reasonable steps to minimise the cost of the **Claim** any and **Authorised Proceedings** relating to such **Claim**, including where appropriate applying to transfer the **Authorised Proceedings** to a lower or cheaper **Relevant Court** and assessing the appropriate level of legal representation. Where the **Authorised Proceedings** are settled in favour of the **Insured**, the **Insured** shall seek to recover from any appropriate third party all **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** to which the **Insured** is entitled. The **Insured** shall regularly review the merits of any **Authorised Proceedings** and the strategy being pursued in relation to them with the **Administrators**.

#### 4.10 Settlement

- a) The **Insured** must inform **Insurers** in writing of any offer to settle **Authorised Proceedings** covered by this **Policy** or of a payment into court, as soon as reasonably practicable after the same is made. The **Insured** must not make any offer to settle any **Authorised Proceedings**, make any payment into court or enter into any agreement to settle any **Authorised Proceedings** or discontinue any such proceedings without **Insurers'** prior written consent (such consent not to be unreasonably withheld or delayed).
- b) The **Insured** must not make any admission of liability without the **Insurers'** prior written consent. These conditions shall continue in full force at all times in respect of any **Claim** in which any payment of **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** has been made by the **Insurers**, including after the exhaustion of the **Limit of Liability**.
- c) The **Insurers** may make any **Settlement** of any **Authorised Proceedings** it deems expedient, subject to such **Insured's** written consent. If an **Insured** withholds consent to such **Settlement**, the **Insurers'** liability for all its loss on account of such **Authorised Proceedings** shall not exceed the amount for which the **Insurers** could have settled such **Authorised Proceedings**, as of the date such **Settlement** was proposed in writing by the **Insurers**, less **Co-insurance** (if any) and the applicable **Excess**.

#### 4.11. Legal Representative's Costs

The **Insured** must not, without the **Insurers'** prior written consent, enter into any fee agreement with the **Legal Representative**. All invoices (inclusive of fees and disbursements) for **Assertion** or **Defence Costs** relating to any **Authorised Proceedings** which the **Insured** receives from the **Legal Representative** must be forwarded to **Insurers** without delay, but no later than 15 days after their receipt by the **Insured**. The **Insurers** may require the **Insured** to request the **Legal Representative** to submit all invoices to a third party, court or relevant professional body as appropriate for review.

- a) The **Insured** remains at all times responsible for payment of all **Assertion** or **Defence Costs**: however, the **Insurers** will settle its liability in relation to such costs directly with the **Legal Representative** if requested to do so by the **Insured**, provided that the invoices are approved by the **Insured** and the **Insurers** are satisfied that such **Assertion** or **Defence Costs** have been properly incurred. Any payments made by the **Insurers** in such circumstances shall have been deemed to be made on account, fully reserving the **Insurers'** rights to have the **Legal Representative's** costs reviewed or assessed at the conclusion of the case or at the point of the **Insurers'** liability ceasing, whichever shall be the sooner.
- b) If requested by **Insurers**, the **Insured** must ask the **Legal Representative** to submit such legal cost bill for costs assessment or certification by the Law Society, court or other professional body as appropriate.

#### 4.12 Reimbursement

- a) **Insured** shall use its best endeavours to secure:
  - i. an award of costs or damages in favour of the **Insured** in connection with any court judgment; or
  - ii. a monetary sum in **Settlement of Authorised Proceedings**.

Following an award to the **Insured** of costs or damages of any nature, or receipt of any **Settlement** sum by the **Insured**, the **Insured** shall procure prompt reimbursement (up to the amount of such award or **Settlement**) to **Insurers** of any **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** which **Insurers** have paid.

- b) **Insurers** shall not seek to recover any sum in excess of their obligations in respect of **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** or any sum in excess of the amount of any judgement, award, order, costs, damages or **Settlement** received by the **Insured**.
- c) Notwithstanding the above, **Insurers** shall have a lien on any award, order, costs, damages or **Settlement** due to the **Insured** to recover any **Adverse Costs, Assertion Costs, Damages, Defence Costs** and/or **Recall Costs** paid or payable under this **Policy**
- d) Where rights of recovery are vested in the **Insurers** in circumstances where the exercise of such rights could reasonably be expected to lead to a recovery from which the **Insured** might benefit, the **Insurers** shall exercise such rights in good faith, in co-operation with the **Insured**, and with regard to the interests of the **Insured**. In those circumstances the **Insurers** shall not compromise any such recovery right without the prior written consent of the **Insured** (such consent not to be unreasonably withheld or delayed).

## Section 5. General Conditions

### 5.1 Insurers' Liability

**Insurers'** liability under any and all contracts of insurance evidenced or deemed to be evidenced by this **Policy** shall be the liability specified in this **Policy** as applicable to any one such contract and in the aggregate and shall not (save as so specified) be varied or deemed varied by virtue of the number or type of persons named as **Insured** or the number or type of **Claims** under this **Policy**.

### 5.2 Fraudulent Claims

If the **Insured** makes any **Claim** under this **Policy** knowing it to be fraudulent or false (or in circumstances where it ought reasonably to be known) or where there is collusion involving dishonesty between the parties to the Action, this **Policy** shall be cancelled by Underwriters for the reasons set out in and in compliance with the Australian Insurance Contracts Act

### 5.3 Alternative Dispute Resolution

In the event that a dispute arises between **Insurers** and the **Insured** out of or otherwise in relation to this agreement, then:

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

If the difference relates to the refusal or withdrawal of consent by **Insurers** and the arbitrator's decision is in favour of the **Insured**, **Insurers** shall give or maintain consent and shall pay the costs of the arbitration. **Insurers** right shall continue notwithstanding any decision in any previous arbitration.

If the arbitrator's decision is in favour of **Insurers**, **Insurers** shall refuse or withdraw consent and the cost of the arbitration (including the costs of the **Legal Representative**) shall be borne by the **Insured**.

If the difference or question relates to any other matter under this **Policy**, the costs of the arbitration shall be borne by the parties in such proportion as may be determined by the arbitrator.

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

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

- (c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent **Court** in the Commonwealth of Australia in relation to the matters in dispute.  
Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such **Court**.

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

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

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

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

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief. Furthermore nothing in this Section will prevent the insured from making a complaint under the "How to Make a Complaint" section of this this policy.

#### 5.4 Assignment

The **Insured's** rights under this **Policy** may not be assigned without **Insurers'** prior written agreement, such agreement not to be unreasonably withheld.

#### 5.5 Notices

Notice under this **Policy** shall be deemed given:

- a) to **Insurers** if sent by first class prepaid post to the **Administrator** or by email at the **Administrator's** address given in the **Schedule** or to such other address as has been notified to the **Insured** for this purpose from time to time;
- b) to the **Insured** or any other person if sent by post to his last known address.

## 5.6 Governing Law

This Policy shall be governed by the laws of the Commonwealth of Australia, unless agreed otherwise by the Insured and Insurers and if stated in the Schedule

## 5.7 Our Legal Rights

In the event of any payment by **Insurers** under this **Policy**, **Insurers** shall be entitled to all of the **Insured's** rights of recovery therefor against any person or entity, and the **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights for **Insurers**. Furthermore, the **Insured** shall do nothing to prejudice such rights at any time. Any amount recovered in excess of **Insurers'** total payment shall be paid to the **Insured**, less the cost to **Insurers** of recovery.

## 5.8 Severability

If any provision or part of this **Policy** is held to be invalid:

- a) such provision shall be deemed deleted and severed from this **Policy**;
- b) amendments to this **Policy** may be made by the addition or deletion of wording as appropriate to replace the invalid part or provision with such provision that retains the closest possible effect to the invalid provision or part and is both valid and enforceable; and
- c) the validity and enforceability of the other provisions of this **Policy** shall not be affected.

## 5.9 Allocation

If there are multiple actions constituting one **Claim**, and if one or more, but not all of the actions are not covered by this **Policy**, in whole or in part, the **Insured** and **Insurers** shall use their reasonable efforts to fairly and reasonably allocate **Assertion** or **Defence Costs** (and any **Damages**) between such actions. If the **Insured** and **Insurers** are unable to agree upon such an allocation, then their dispute shall be subject to dispute resolution pursuant to Clause 5.3. **Insurers** shall advance **Assertion** or **Defence Costs** (and any **Damages**) on behalf of the **Insured** in the proportion that **Insurers** believe to be fair and proper until a different allocation is agreed upon by the **Insured** and **Insurers**, or is determined through dispute resolution pursuant to Clause 5.3. Any such allocation agreed to or determined by dispute resolution shall be applied retroactively to all **Assertion** or **Defence Costs** (and any **Damages**) paid with respect to the **Authorised Proceedings**, notwithstanding any prior advancement to the contrary. Any advancement of **Assertion** or **Defence Costs** (and any **Damages**) shall not apply to or create any presumption with respect to the allocation of **Assertion** or **Defence Costs** (and any **Damages**) on account of any other **Authorised Proceedings**.

## 5.10 Sanctions

It is a condition of this insurance, and the insured agrees, that the provision of any cover, the payment of any claim and the provision of any benefit hereunder shall be suspended, to the extent that the provision of such cover, payment of such claim or provision of such benefit by the insurer would expose that insurer to any sanction, prohibition or restriction under any: United Nations' resolution(s); or the trade or economic sanctions, laws or regulations of the commonwealth of Australia, New Zealand, the European Union, United Kingdom or United States of America.

Such suspension shall continue until such time as the insurer would no longer be exposed to any such sanction, prohibition or restriction.

## 5.11 Service of Suit

The **Insurers** hereon agree that:-

- (i) In the event of a dispute arising under this **Policy**, **Insurers** at the request of the **Insured** will submit to the jurisdiction of any competent **Court** in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such **Court**.
- (ii) Any summons notice or process to be served upon the **Insurers** may be served upon  
  
Lloyd's Underwriters' General Representative in Australia  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000  
Australia  
  
who has authority to accept service and to enter an appearance on **Insurers'** behalf, and who is directed at the request of the **Insured** to give a written undertaking to the **Insured** that he will enter an appearance on **Insurers'** behalf.
- (iii) If a suit is instituted against any one of the **Insurers** all **Insurers** hereon will abide by the final decision of such **Court** or any competent Appellate Court.

#### 5.12 General Insurance Code of Practice

This **Policy** does not comply with the Insurance Council of Australia's General Insurance Code of Practice.

#### 5.13 War and Civil War Exclusion

Notwithstanding anything to the contrary contained herein this **Policy** does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalism or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

#### 5.14 Terrorism Exclusion

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

#### 5.15 Non-Admitted Insurance Clause

The **Insured** acknowledges and recognises by accepting this contract of insurance that it is possible that not all entities and/or persons named as or falling within the definition of **Insured** within the Contract Wording may be capable of enforcing this contract of insurance, or in respect of which there may be regulatory or other adverse impact by reason of the **Insurers'** lack of a license in one or more particular territories or by the choice of the **Insured**. Such entities and/or persons are hereafter referred to as a "**Local Entity or Person**".

Such **Local Entity or Person** is not a party to or insured under this contract of insurance and cover in respect of such **Local Entity or Person** shall be provided to the **Insured** in respect of its insurable financial interest in such **Local Entity or Person** if it benefits financially from the continued operation and preservation of the **Local Entity or Person** and its assets and/or would suffer a detriment by reason of any loss, damage, impairment or liability sustained by such **Local Entity or Person**.

Where this contract constitutes non-admitted insurance permissible under applicable law, the **Insurers** shall only be responsible for providing any locally required bonds, local fiscal charges, certificates of insurance or any other



documents as evidence of insurance if and to the extent that its provision of such documentation and cover is permissible.

Where loss or damage of the financial interest of the **Insured** in respect of any **Local Entity or Person** is indemnified under this contract, the **Insurers** shall be subrogated to all rights and remedies of the **Insured**. If requested by the **Insurers**, the **Insured** shall:

- a) Report fully and fairly on all causes of action which the **Local Entity or Person** may have against the third party arising out of the facts and circumstances which gave rise to its loss;
- b) Procure that the **Local Entity or Person** shall litigate against any such third party (including any insurer(s) issuing a policy to that **Local Entity or Person**):
  - i. in the name of that **Local Entity or Person** or any plaintiff with the appropriate right to bring such a claim in the relevant court or arbitral forum;
  - ii. in respect of which claim the relevant claimant shall effect the directions and instructions of the **Insurers** through the **Insured**, including the investigation, adjustment and defence of any loss which might be recoverable with access to books, records, bills invoices, vouchers and other relevant information, the reasonable costs of which shall be paid by the **Insurers** in accordance with the terms and limits of this **Policy** save that where the sum claimed exceeds the indemnity provided by this clause the **Insurers** shall only make a proportionate contribution to such costs in the ratio of the indemnified loss to the total claim;

The **Insured** shall procure that the **Local Entity or Person** assigns to the **Insured** the benefit of any cause of action it may have against any such third party (including any insurer issuing a policy to the **Local Entity or Person**). If other **Insureds** or the **Insured** subsequently recover any sum from a third party in respect of such cause of action the **Insured** shall repay the corresponding amount to **Insurers** hereon.

Any misrepresentation, failure to disclose material information, false statement, fraudulent or exaggerated claim made by or on behalf of a **Local Entity or Person** shall be treated as made by the **Insured**.



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