Real Estate Professional Indemnity

Policy Wording

Issued by Agile Underwriting Services Pty Ltd

ABN 48 607 908 243 — AFSL 483374

FIL-REA-AU-04-24

Financial Lines

Real Estate PI

Powered by AGILE.

Contents

Part A - Product Disclosure Statement

This Document is a Product Disclosure Statement and is also the Agile Underwriting Services Pty Ltd (Agile) Policy Wording.

This Document contains important information required under the *Corporations Act 2001 (Cth)* and has been prepared to assist You in understanding Your Policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

It is important that You carefully read and understand this Document before making a decision. Other Documents may form part of Agile's Policy Wording and PDS and if they do, Agile will tell You in the relevant Document. Please keep this Document and any other Documents that Agile tell You form part of Your Policy and keep in a safe place in case You need to refer to them in the future.

This Policy is a legal contract between the Insured and the Insurer. The Insured has paid, or agreed to pay, the Insurer the required Premium and the Insurer will provide indemnity as specified in this Policy and as set out in the Policy Schedule. It is essential that the Insured reads all of the Policy terms and conditions before they purchase it to ensure that this Policy provides them the protection they require and is aware of the Limits of Indemnity provided and the amounts the Insurer will pay (including any Deductible that applies) noting that some of these will be stated in the Policy itself (these are Our standard Policy limits) and the remainder will be stated in the Policy Schedule. The Insured must ensure that they are aware of the Definitions of this Policy.

The Insured must comply with all provisions of this Policy, otherwise the Insurer may be entitled to refuse to pay a Claim or reduce its liability under this Policy. This Policy is in force for the Period of Insurance set out in the Policy Schedule or until cancelled.

Claims Made Notice

This policy operates on a "claims made and notified" basis. This means that this policy covers the Insured for claims made against them and notified to the Insurer during the Period of Insurance.

General Information

In this PDS, "We", "Us", "Our" means certain Underwriters at Lloyd's led by Agile Syndicate 2427 managed by Asta Managing Agency Ltd, through their coverholder Agile Underwriting Services Pty Ltd and "You", "Your" means the Insured.

1.1 Who Can I Contact If I Have Questions?

We have simplified Our contact points so You can easily get in touch with Us.

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
General enquiries, including Policy questions and coverage, and Policy amendments. Any questions, just call or email.	1300 705 031 finlines@withagile.com
Cancelling Your Policy You can cancel Your Policy at any time.	1300 705 031 cancel@withagile.com
Making a Claim online You can Claim directly through Our online portal.	agileunderwriting.com/claims-and-help/
Making a Claim Get in touch as soon as possible and We can help.	1300 705 031 claims@withagile.com
Making a complaint If You're not happy...We want to know.	1300 705 031 complaints@withagile.com
Family/Domestic Violence For further information please visit https://www.agileunderwriting.com/claims-and-help/family-domestic-violence-policy/	1300 705 031 family@withagile.com In an emergency or You are not feeling safe, call 000
Support for customers experiencing vulnerability or financial hardship For further information please visit https://www.agileunderwriting.com/claims-and-help/supporting-customers-experiencing-vulnerability-policy/ https://www.agileunderwriting.com/claims-and-help/financial-hardship/	1300 705 031 hardship@withagile.com

1.2 About Agile Underwriting Services

This insurance is issued by Agile Underwriting Services Pty Ltd (ABN 48 607 908 243, AFS Licence No. 483374) (Agile). Agile arranges policies for and on behalf of certain Underwriters at Lloyd's (the Insurer) led by Agile Syndicate 2427 managed by Asta Managing Agency Ltd

In all aspects of this policy, Agile acts as agent for the Insurer and not for the Insured.

Our contact details are:

Head Office: Level 5, 63 York St, SYDNEY NSW 2000

Postal Address: Level 5, 63 York St, SYDNEY NSW 2000

Telephone: 1300 705 031

E-mail: service@withagile.com

Website: www.agileunderwriting.com

1.3 About LLOYD'S

Lloyd's is the world's specialist insurance and reinsurance market. With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world – building resilience for businesses and local communities and strengthening economic growth around the world.

1.4 About This Policy

We agree to provide You with insurance in accordance with the terms, conditions, and exclusions of the Policy based on the information You have provided or that was provided on Your behalf to Us, subject to payment of the Premium required. The Policy consists of this Document, the Schedule and any endorsements affixed (or intended to be affixed) to it and the Proposal form. All of them should be read as if they were one Document. This Policy is subject to Australian law and practice.

Your Certificate of Insurance

Your certificate of insurance contains important details about Your Policy such as the Period of Insurance, Your Premium, what cover options and excesses will apply, and any changes to the Policy wording.

What Makes Up Your Premium

Your Premium is determined by a number of factors and of course, the higher the risk is, the higher the Premium. Your Premium also includes amounts that We are required to pay, such as government charges, taxes or levies (e.g. stamp duty and GST) that apply to Your Policy. You will find these amounts on Your certificate of insurance.

1.5 Important Information About This Policy Wording and Product Disclosure Statement

This Document is a PDS and is also Our insurance Policy Wording.

This Document contains important information required under *the Corporations Act 2001 (Cth)* (the Act) and has been prepared to assist You in understanding Your Policy and making an informed choice about Your insurance requirements. It is up to You to choose the cover You need.

It is important that You carefully read and understand this Document before making a decision. Other Documents may form part of Our Policy Wording and PDS and if they do, We will tell You in the relevant Document.

In return for You paying Us a Premium, We insure You for the events described in the Policy Wording and PDS, subject to the terms, conditions and exclusions of Your Policy. Please keep this Document, Your Schedule and any other Documents that We tell You form part of Your Policy in a safe place in case You need to refer to them in the future. Please check these Documents to make sure all the information in them is correct. Please let Us know as soon as possible if any alterations are needed or if You change Your address or payment details. For certain types of cover under the Policy, We will require You to provide receipts and other documentary evidence to Us before We pay a Claim.

Check Your Documents

It's important that You check all the details on the documents We send You. If You notice an error or if You have a question, please contact Us at www.agileunderwriting.com/contact. If You find You need to change the cover for whatever reason, get in contact with Us.

General Insurance Code of Practice

Lloyd's is a signatory to the General Insurance Code of Practice (the Code). The Code sets out minimum standards that We will uphold in respect of the products and services that We provide. Further information about the Code is available at www.codeofpractice.com.au and on request.

1.6 Your Duty of Disclosure

What You Must Tell Us

We will ask You various questions when You apply for cover. When You answer those questions,
You must take reasonable care not to make a misrepresentation to Us. We will use the answers in deciding whether to insure You, and anyone else to be insured under the Policy, and on what terms. You have this same duty to disclose those matters to Us before You renew, extend, vary or reinstate Your Policy.

If You Do Not Tell Us

If You do not answer Our questions in this way, We may reduce Our liability under contract in respect of a Claim or refuse to pay a Claim, or cancel the Policy. If You answer Our questions fraudulently, We may refuse to pay a Claim and treat the Policy as never having commenced.

1.7 Who can Purchase this Policy

Certain eligibility criteria apply. This Policy can only be purchased by customers domiciled in Australia.

1.8 General Conditions

Commencement and Period of Your Policy

Your Policy begins on the date shown on the Schedule and continues for the period as shown in the Schedule after which time it expires, or until it is cancelled. This is Your Period of Insurance.

Renewal of Your Policy

This insurance may be renewed for further consecutive yearly periods upon payment of the Premium. Payment of Your Premium is deemed to be acceptance of an offer of renewal for a further yearly period.
If You continue to pay Your Premium, then unless Your Policy is cancelled or We advise You prior to the renewal date that We will be updating Your Policy or not be renewing, a Policy on the same terms and conditions automatically comes in to existence for one (1) year from the renewal date.

Expiry of Your Policy

Your Policy expires at the end of the Period of Insurance. We may decide not to renew Your Policy.
If We decide not to renew Your Policy, We will send You an expiry notice at least fourteen (14) days before the expiry of Your Policy. If Your Policy is cancelled or otherwise terminated, the Period of Insurance will be from the commencement date or renewal date, whichever is the later, up to and including the date of cancellation or termination.

Australian Law

The Underwriters accepting this Insurance agree that:

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

ii) any summons notice or process to be served upon the Underwriters may be served upon:

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

who has authority to accept service on the Underwriters' behalf;

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

In the event of a Claim arising under this insurance notice should be given as soon as possible to:

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
Making a Claim Get in touch as soon as possible and we can help.	1300 705 031 claims@withagile.com

Australian Currency

All payments by You to Us and Us to You or someone else under Your Policy must be in Australian currency. If a claim under this Policy is stated in a currency other than Australian dollars, payment under this Policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of loss is due, as the case may be.

Cooling Off Period

You have fourteen (14) days from the date We confirmed, electronically or in writing, that You are covered under Your Policy to decide if the Policy meets Your needs. You may cancel Your Policy simply by calling Us on 1300 705 031 or advising Us in writing within those fourteen (14) days to cancel it. If You do this, We will refund any Premiums You have paid during this period.

These cooling off rights do not apply if You have made or You are entitled to make a Claim during this period.

You still have cancellation rights even after the cooling off period ends however, We may deduct certain amounts from any refund (see clause 1.9 of the Policy Wording).

1.9 Cancellation of Your Policy

Your Policy may be cancelled in one of two (2) ways:

When You Can Cancel

You can cancel all or part of Your Policy at any time by emailing Us at cancel@withagile.com or by calling Us on 1300 705 031.

If You:

a) pay Your Premium by instalments and wish to cancel, We will cancel on the date to which You have paid Your Premium in advance.

b) do not pay Your Premium by instalments, the cancellation will take effect at 4pm Local Standard Time on the day We receive Your notice of cancellation.

On cancellation, We will refund the Premium for Your Policy, less an amount which covers the period for which You were insured. However, We will not refund any Premium if We have paid or are obliged to pay a benefit under Your Policy.

When We Can Cancel

We can cancel Your Policy by giving You written notice to the address on file and in accordance with the *Insurance Contracts Act 1984* (Cth), including where You have:

a) breached the Duty of Disclosure;

b) breached a provision of Your Policy (including one requiring payment of Premium);

c) made a fraudulent Claim under any Policy of insurance. If We cancel, We will refund the Premium for Your Policy less an amount to cover the period for which You were insured;

d) undertaken deception, fraud or Illegal Use, We may be entitled to void this Policy or withdraw from it in the event of intentional misrepresentation or deception. If it is determined at the final adjudication that a fraudulent Claim has been made, all entitlements and benefits which We have provided to You will be forfeited, and information may be forwarded to the police and the prosecuting authorities.

On cancellation, We will refund the Premium for Your Policy, less an amount which covers the period for which You were insured. However, We will not refund any Premium if We have paid or are obliged to pay a benefit under Your Policy.

1.10 Claims

In the event of a Claim under Your Policy You must comply with the requirements under Conditions 7.1 and 7.2.

Claims Documentation

To facilitate the settlement of Your Claim, please provide Us with any requested documentation, including the following:

- ☑ a written notification detailing the nature and extent of the Claim
- ☑ copies of all correspondence exchanged with any third party
- ☑ any invoices or quotations related to the Claim
- ☑ details of any other insurance that may exist.

In the event of a Claim arising under this insurance notice should be given as soon as possible to:

FOR ENQUIRIES RELATING TO	PLEASE CONTACT
Making a Claim Get in touch as soon as possible and We can help.	1300 705 031 claims@withagile.com

1.11 Complaints and Dispute Resolution

Agile takes the concerns of its customers very seriously. Agile has detailed complaint handling and dispute resolution procedures that You may access, at no cost to You. To obtain a copy of Our procedures, please contact Us on 1300 705 031 or complaints@withagile.com. To assist Agile with Your enquiries, please provide Us with Your Claim or policy number (if applicable) and as much information You can about the reason for Your complaint or dispute. Agile's complaints and dispute procedures are as follows:

Stage 1: Complaint Handling Procedure

This insurance is subject to the provision of the Insurance Council of Australia's General Insurance Code of Practice. For more information see www.codeofpractice.com.au

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance Claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Agile in the first instance:

Postal address: The Complaints Officer
Agile Underwriting Services Pty Ltd
Level 5, 63 York St, Sydney NSW 2001
Telephone: 1300 705 031
Email: complaints@withagile.com

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

Stage 2: Dispute Resolution Procedure

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

Postal address: Lloyd's Australia Limited
1603 Level 16, 1 Macquarie Place,
Sydney NSW 2000
Telephone: (+61 2) 8298 0783
Email: idraustralia@lloyds.com

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint. You may refer your complaint to the Australian Financial Complaints Authority (AFCA) at any time, and if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint:

Postal address: Australian Financial Complaints Authority (AFCA)
GPO Box 3, Melbourne VIC 3001

Telephone: 1800 931 678
Email: info@afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or provided with other options.

1.12 Updating Our PDS

We may update the information contained in Our PDS when necessary, and may also issue other documents forming part of Our PDS and the Policy where required or permitted by law.

We will issue You with a new PDS or a supplementary PDS where the update is to rectify a misleading or deceptive statement or when an omission is materially adverse from the point of view of a reasonable person deciding whether to buy this product. A paper copy of any new PDS, supplementary PDS, or other compliant Document will be provided to You at no cost within a reasonable amount of time after the PDS has been updated, except in limited cases.

If the information is not correcting a misleading or deceptive statement or omissions, or is not something that would be materially adverse from the point of view of a reasonable person considering whether to buy this insurance, then Agile may provide You with notice of this information in other forms. A copy of any new PDS or supplementary PDS will be available to You at no cost by calling Agile.

You may, following receipt of the updated PDS, either accept the new PDS or supplementary PDS, or alternatively cancel the Policy.

If You wish to accept the new PDS or supplementary PDS, You do not need to do anything.

If You decide to cancel the Policy, then clause 1.9 will apply.

1.13 Privacy Statement

At ***Agile***, We are committed to protecting Your privacy in accordance with the *Privacy Act 1988* (Cth).

FOR ENQUIRIES RELATING TO PRIVACY	PLEASE CONTACT
Contact Our Privacy Officer at Agile by Email	privacy@withagile.com
Contact Our Privacy Officer at Agile by Phone	1300 705 031
Contact Our Privacy Officer at Agile by Mail **by writing to**	Privacy Officer, Agile Underwriting Services Pty Ltd Level 5, 63 York Street Sydney NSW 2000

Agile collect Your personal information to assess Your application for insurance, administer Your policy and pay Your claims. If You do not provide the information that Agile may request, Your insurance application may not be accepted, or Agile may not be able to administer Your policy or administer a claim. Also, You may breach Your duty of disclosure, the consequences of which are set out in 6. Your Duty of Disclosure. Agile may need to share Your information with others to decide whether to accept Your policy, administer Your policy and manage and pay Your claims.

To allow Agile to do this and to otherwise operate our business, Your personal information may be given to and used by the following:

1. The Underwriters of this policy are certain Underwriters at Lloyd's and its own employees and agents. The Underwriters are in the United Kingdom. When Your information is disclosed to the Underwriters it will be protected by the General Data Protection Regulation which contains similar protection to the Australian Privacy Principles.
2. Claims adjusters, lawyers and other people appointed by Agile or the Underwriters, or on Agile's behalf or the Underwriters behalf for claims handling purposes.

By submitting Your personal information to Agile, You agree to Agile using and disclosing Your personal information this way. This consent to the use and disclosure of Your personal information remains valid unless You alter or revoke it by giving Agile written notice.

If Your details or personal information changes You should notify Agile in writing at the above contact details, so Agile can ensure that the information Agile hold about You is accurate, complete and up to date.

1.14 Words with Special Meanings

Throughout this Document, certain words have special meaning and are included in Definitions (Part B, Section 9: Definitions) of this Policy Wording and PDS. Please refer to the Definitions for their meaning. Any reference to an Act, legislation or legislative instrument in this Document also refers to that Act, legislation or legislative instrument as amended and may be in force from time to time.

Part B - Policy Terms

Section 1: Introduction

1.1 Subject to payment of the Premium or as agreed in writing, We agree to provide indemnity in accordance with and subject to the terms and conditions of this Policy.

1.2 Before this Policy commenced, We received information provided on behalf of the Insured in the Proposal and in other ways. We have relied on this information to decide whether to enter into this contract and on what terms. If any of this information is wrong or false it may affect the cover provided by this Policy.

1.3 Any word or expression in which a specific meaning has been attached shall bear that special meaning wherever they appear and the meanings of these words can be found in Section 9: Definitions.

Section 2: Insuring Clause

2.1 We agree to indemnify the Insured, up to the Limit of Indemnity, against civil liability for compensation to any third party arising from any Claim that results from the conduct of the Insured's Professional Services that:

a) is first made against the Insured during the Period of Insurance; and

b) is notified to Us during the Period of Insurance; and

c) arises from an act, error or omission committed after the Retroactive Date.

2.2 We also agree to pay Costs and Expenses incurred with Our written consent, in respect of any Claim indemnified by this Policy.

2.3 We also agree to pay Enquiry Costs, incurred with Our prior written consent, in accordance with clause 4.4 Enquiry Costs.

Section 3: Insuring Clause Clarification

For the purpose of clarifying the scope of cover under the Insuring Clause, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this Policy:

3.1 Defamation

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured arising from unintentional defamation.

3.2 Competition & Consumer Legislation

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured under the terms of the *Competition and Consumer Act 2010 (Commonwealth),* the *Fair Trading Act 1987 (NSW),* the *Fair Trading Act 1985 (Victoria)* or similar legislation enacted by the other states and territories of the Commonwealth of Australia or the Dominion of New Zealand.

3.3 Intellectual Property

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against the Insured for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

3.4 Retroactive Date

"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 shall provide indemnity in respect of Claims arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or alleged to have been committed).

"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.

Section 4: Other Policy Benefits

We shall provide indemnity in accordance with the Insuring Clause and this policy as is clarified in this Section, for no additional Premium, provided always that:

a) the indemnity provided is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);
b) the inclusion of such cover clarification shall not increase the Limit of Indemnity.

4.1 Advancement of Costs

The Insurer will advance insured Costs and Expenses, and Enquiry Costs incurred by the Insurer or the Insured with the Insurer's prior written consent, as they are incurred and prior to final adjudication of a Claim.

The Insurer may not refuse to advance Insured Costs and Expenses or Enquiry Costs by reason only that the Insurer considers that conduct referred to in Exclusion 6.5 Fraud and Dishonesty, has occurred, until such conduct is established by a formal written admission by the relevant Insured or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the Insurer).

If and to the extent that the Insured is not entitled to coverage under the terms and conditions of this Policy, then the Insurer will cease to advance such costs and any amounts previously advanced shall be repaid to the Insurer.

4.2 Loss of Documents

We agree, in the event of loss or damage to Documents, to indemnify the Insured against all Costs and Expenses reasonably incurred by the Insured in replacing and restoring such Documents provided that:

a) such loss or damage is sustained during the Period of Insurance while the Documents are either in transit or in the custody of the Insured or any person to whom the Insured has entrusted them in the course of the normal conduct of the Professional Services;
b) where the Documents are in electronic format, the Insured or any person to whom the Insured has entrusted them, have in place sufficient and proper procedures for the security and daily back-up of the Documents;
c) the amount of any Claim for such Costs and Expenses shall be supported by bills and / or accounts which shall be subject to approval by Us or a competent person nominated by Us;

We shall not be liable for loss or damage to Documents caused by:

i) riot or civil commotion
ii) fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause
iii) interference with electronically stored data by any person who is not a current principal, partner, director or Employee of the Insured.

4.3 Fraud and Dishonesty

We agree to indemnify the Insured against civil liability for compensation arising from any Claim made against that Insured, which would otherwise be excluded by reason of Exclusion 6.5 Fraud and Dishonesty, arising from any dishonest, fraudulent, criminal or malicious act or omission, by an Insured.

Provided always that such indemnity shall not be provided to any Insured who committed, allowed, or condoned any dishonest, fraudulent, criminal or malicious act or omission.

4.4 Enquiry Costs

We will indemnify the Insured for Enquiry Costs provided that;

a) notice requiring the Insured's response or attendance is first received by the Insured and is notified to Us during the Period of Insurance;
b) such response or attendance arises directly from conduct committed or allegedly committed by the Insured in the performance of the Professional Services;
c) such indemnity is subject to the written consent of Us prior to the incurring of the Enquiry Costs;
d) We at Our discretion, are entitled to appoint legal representation to represent the Insured at the inquiry or hearing;
e) regular or overtime wages, salaries or fees of the Insured are excluded from indemnity under Enquiry Costs cover;

Our total aggregate liability during any one Period of Insurance in respect of Enquiry Costs made under this clause shall not exceed $250,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule.

4.5 Court Attendance Costs

Costs and Expenses include Court Attendance Costs, subject to the limit in this clause.

We agree to provide up to $500 per day for Court Attendance Costs incurred by Employees of the Insured, or up to $1,000 per day for Court Attendance Costs incurred by partners, principals or directors of the Insured if they are legally compelled to attend a civil proceeding as a witness in a Claim covered by this Policy.

Our total aggregate liability during any one Period of Insurance for all Court Attendance Costs shall not exceed $50,000 and $2,500 per day and shall be part of and not in addition to the Limit of Indemnity as shown on the Policy Schedule.

4.6 Mitigation of Costs

Costs and Expenses includes mitigation costs as detailed in this clause.

The Insurer will indemnify the Insured for Costs and Expenses reasonably incurred in respect of any action taken to mitigate a potential Claim that otherwise would be the subject to indemnity under the Policy provided that:

a) any such Costs and Expenses to mitigate a potential Claim are likely to exceed $50,000, and should such action not be urgent, then You should first provide written notice to the Insurer during the Period of Insurance of Your intention prior to incurring any Costs and Expenses, in order to obtain from Us a written consent prior to incurring such costs. Such consent will not be unreasonably withheld.

The onus of proving entitlement to indemnity pursuant to this clause shall be upon the Insured.

The total liability of the Insurer for all Costs and Expenses incurred under this extension will not exceed in the aggregate, during the Period of Insurance $500,000 and shall be part of and not additional to the Limit of Indemnity as shown in the Policy Schedule.

The Deductible is applicable to this extension.

4.7 Privacy Breach Costs

Costs and Expenses includes Privacy Breach costs as detailed in this clause.

The Insurer will indemnify the Insured for the reasonable direct costs of notifying individuals or corporations of a Privacy Breach, resulting from the conduct of the Professional Services.

If the Costs and Expenses to take such action are likely to exceed $50,000, and should such action not be urgent, then You should first provide written notice to the Insurer during the Period of Insurance of Your intention prior to incurring any such Costs and Expenses, in order to obtain from Us a written consent prior to incurring such costs. Such consent will not be unreasonably withheld.

The total liability of the Insurer for all Privacy Breach costs will not exceed in the aggregate, during the Period of Insurance $250,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule.

The deductible is applicable to Privacy Breach Costs. For the purposes of this clause, the Exclusion 6.14 Retroactive Date, is amended to read 'any costs resulting from any incident occurring prior to the Retroactive Date'.

4.8 Public Relations Expenses

Costs and Expenses includes public relations expenses as detailed in this clause.

We agree to pay any reasonable fee, costs, and expenses of a public relations consultant where the Insured for the sole purpose of protecting the Insured's reputation that has been brought to question as a direct result of a Claim covered by this Policy. Provided always that:

a) the Insured notifies Us on first becoming aware of the Insured's reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
b) We have given prior written consent to retain the services of such public relations consultant; and
c) Our total aggregate liability during any one Period of Insurance for all public relations expenses shall not exceed $250,000 and shall be part of and not additional to the Limit of Indemnity as shown in the Policy Schedule.

4.9 Newly Created Subsidiary

We agree to include in the definition of Insured to include any Subsidiary created by the Named Insured during the Period of Insurance for a period of up to fourteen (14) days (but never beyond the expiry date of the period of cover) from the date of such creation.

Provided always that this extension of policy definition will only apply in respect of Claim(s) against the Subsidiary arising from an act, error or omission occurring subsequent to the date of creation of the Subsidiary.

4.10 Run Off Cover Insured Entity

We agree that in the event that an Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such Insured entity shall continue until the expiry date of the Period of Insurance.

Provided always that such coverage shall only apply in respect of Claim(s) arising from an act, error or omission occurring prior to the effective date that such Insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

4.11 Joint Venture Liability

We agree to indemnify the Insured in respect of any Claim resulting from the Insured's participation in any joint venture in connection with the Professional Services provided that:

a) the indemnity provided shall only relate to the Insured's proportion of any liability by such joint venture; and
b) the Insured's income derived from participation in the joint venture has been included in the calculation of income furnished by the Insured in the Proposal Form; and

c) no cover is provided to the joint venture partner of the Insured.

4.12 Continuous Cover

Where the Insured:

a) first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and
b) had not notified Us of such facts or circumstances prior to the Period of Insurance,

then Exclusion 6.12 Prior or Pending, will not apply to any notification during the Period of Insurance of any Claim resulting from such facts or circumstances, provided that;

i) the Insured's failure to notify is not fraudulent; and
ii) the Insured has been continuously insured, without interruption at the time of notification of the Claim to Us, under a policy issued by Agile Underwriting Services Pty Ltd, and was insured by Agile Underwriting Services Pty Ltd, at the time the Insured first became aware of such facts or circumstances; and
iii) We may reduce their liability under the Policy to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance; and
iv) the Limit of Indemnity We provide shall be the lesser available under the policy in force when the Insured first became aware of the facts or circumstances or under this Policy. The terms of this Policy otherwise apply.

4.13 Vicarious Liability (Contractors and Consultants)

We will indemnify You for civil liability arising from the acts, errors or omissions of Your Contractors, sub-contractors or consultants provided that;

a) the work is carried out whilst acting for you or on your behalf and in connection with Your Professional Services as detailed in the schedule, and
b) there is no separate contract in place between the Contractor, sub-contractor or consultant and the client, and
c) full rights of subrogation against the Contractor, sub-contractor or consultant are maintained by the Insured

Such Contractors, or sub-contractors or consultants, however, are not otherwise Covered by this Policy.

4.14 Spousal Liability

If a Claim against an Insured includes a Claim against such Insured's Spouse solely by reason of:

a) such Spouse's legal status as a Spouse of such Insured; or
b) such Spouse's ownership interest in property which the Claimant seeks as recovery for Claims made against such Insured, then the Spouse's legal liability for compensation resulting from such Claim will be treated for the purposes of this Policy as the liability of the Insured. This clause does not apply to the extent the Claim alleges any act, error or omission by such Insured's Spouse.

4.15 Statutory Liability

Notwithstanding Exclusion 6.4 Fines and Penalties, We will pay for your Statutory Liability for any Claim where that liability is incurred in connection with your Professional Services, provided that:

a) We may lawfully pay for such Statutory Liability
b) this Statutory Liability cover does not extend to Statutory Liability which arises either directly or indirectly based upon, attributable to, or in consequence of any intentional or knowing violation or breach of law if so established by Your admission or by a judgment or other final adjudication against You.
c) Our aggregate liability for all Claims under this clause shall not exceed $250,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule and is subject to the deducible.
d) should cover for Statutory Liability not be lawfully paid, then all Costs and Expenses are also excluded.

For the purposes of this clause 4.15 only "Claim" shall mean:

i) a civil proceeding brought against You for recovery of pecuniary penalties;

ii) written notice from a relevant authority requiring payment of pecuniary penalties by You.

4.16 Property Appraisals

We will indemnify You for all Loss arising from a Claim against You which is first made against You during the Period of Insurance and notified to Us during the Period of Insurance for breach of professional duty by You providing property appraisals as part of its Professional Services provided.

However, We shall not be liable under the Policy to provide Indemnity in respect to any Claim against any Insured arising directly or indirectly based upon, attributable to, or in consequence of a property appraisal unless such appraisal includes a statement to the following effect:

"This appraisal is current at the date of this report only. The value assessed herein may change significantly and unexpectedly over a relatively short period of time (including as a result of general/ market movements or factors specific to the particular property). Liability for losses arising from such subsequent changes in value is excluded as is liability where the appraisal is relied upon after the date of the appraisal".

4.17 Franchisor Indemnity

We will indemnify You for all Loss arising from a Claim against You which is first made against You during the Period of Insurance and notified to Us during the Period of Insurance for civil liability arising from Claims made against You as the Franchisor resulting from the actions of a Franchisee of the Insured but solely arising from the performance of Professional Services, and only where and to the extent You would have been liable had the Claim been made against the You or where such person is named as a co-defendant with You. However, Such Franchisees are not otherwise subject to Indemnity under the Policy.

4.18 Franchisor Vicarious Indemnity

We agree that when the Insured operates as a real estate franchisee, any Claim made against the franchisor arising out of the Insured acts, errors or omissions, the franchisor shall be covered by this Policy as if made against the Insured. However, We will only cover the franchisor for the Costs and Expenses incurred in the investigation, defence or settlement of such a Claim. It is also declared and agreed that;

a) The franchisor is subject to the same terms, conditions and exclusions of this Policy; and

b) The inclusion of this cover is subject to the Limit of Indemnity stated in the schedule; and

c) Cover under the policy would have been available to the Insured, had the claim been made direct against the Insured.

4.19 External Dispute Resolution Scheme

We will indemnify the Insured against Costs and Expenses and any binding award against the Insured made by Scheme in respect of any Claim for civil liability arising from the conduct of the Insured's Professional Services, where the Claim is first made against You and notified to Us during the Period of Insurance provided that:

a) Our total liability for any one award is part of and not in addition to the Limit of Indemnity and shall not exceed:

i) The maximum total value of the remedy that may be decided upon by the Scheme as detailed in the applicable version of the Scheme's Terms of Reference.

b) We shall not be liable in respect of:

i) The cost of membership to the Scheme or any professional association to which You belong; or

ii) The costs of any Scheme services or facilities or those of any professional association to which the Insured belong; or

iii) The costs arising from any dispute between members of such professional association.

For the purposes of this Extension only the definition of "Claim" in the Policy means a complaint against The Insured by a third party to a Scheme.

For the purposes of this Extension, Scheme means an ASIC-approved External Dispute Resolution Scheme.

4.20 Financial Interest

Notwithstanding Exclusion 6.13 Related or Associated Entities (c), We will cover You for any Claim arising directly or indirectly out of or in connection with any business transaction in which You have or had a direct or indirect financial interest (other than fees), or in which You act as a buyer or seller of real property, However You must first obtain a signed and dated acknowledgment from the other party or parties to the transaction acknowledging the amount, value and/or nature of Your financial interest.

Section 5: Optional Extensions

It is agreed that:

a) the indemnity provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise expressly stated herein);

b) the optional extensions do not increase the Limit of Indemnity

where an Optional Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Optional Extension.

5.1 Fidelity

We agree to provide indemnity to the Insured against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Insured where any such loss is sustained in consequence of any dishonest or fraudulent act or omission in which an Insured participated. Provided always that:

a) such loss is first discovered by the Insured during the Period of Insurance and is notified in writing to Us within the Period of Insurance and within twenty-eight (28) days of the date of such discovery;

b) We shall not be liable for any loss sustained in consequence of there being any delay between discovery, or reasonable cause for suspicion, of the act or omission occurring and the Insured taking mitigating action, thus leading to an increase in the loss of money, negotiable instruments, bearer bonds, coupons, stamps, bank or currency notes

c) We shall not be liable for any loss caused by dishonest or fraudulent conduct on the part of the Insured concerned;

d) We shall not be liable to indemnify any Insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;

e) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and We will be under no obligation to provide indemnity to the Insured until such time as We are satisfied that such loss has, in fact, been sustained;

f) Our liability for each loss under this Optional Extension and Our aggregate liability for all losses under this Optional Extension shall not exceed $100,000 and shall be part of and not in addition to the Limit of Indemnity as shown in the Policy Schedule.

g) the Deductible specified in the Policy Schedule applies to any one event, events or series of events caused by acts or omissions of the same person or persons (whether identifiable or not) and events in which such person or persons is/are involved or implicated shall be treated as one event.

5.2 Previous Business

We agree to provide indemnity in respect of any Claim for compensation made against any person who is or becomes or ceases to be during the Period of Insurance a principal, partner or director of the Named Insured for any civil liability arising from a breach of professional duty and incurred on the part of such person in the conduct of the same profession as the Insured’s Professional Services before that person joined the Named Insured, subject to the terms and conditions of the Policy.

5.3 Contractors & Consultants

This Policy is extended to include any Claims arising directly from the actions of any Contractors, sub-contractors or consultants engaged by the Insured for the Professional Service activities as detailed in the Schedule.

We will also indemnify any such Contractors, subcontractor or consultant, provided that the circumstance giving rise to such Claim occurred:

a) in the course of the conduct by the Contractors, sub-contractors or consultants of Your Professional Services whilst acting for You or on Your behalf; and

b) at the time when the Contractors, sub-contractors or consultants was under Your control and supervision.

Section 6: Exclusions

We shall not be liable under this Policy to provide indemnity in respect of any Claim against any Insured:

6.1 Asbestos

directly or indirectly based upon, attributable to, or in consequence of asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity.

6.2 Bodily Injury and Property Damage

directly or indirectly based upon, attributable to, or in consequence of Bodily Injury or Property Damage unless such injury or damage arises directly out of any breach of a professional duty owed by the Insured arising from the provision of Professional Services.

6.3 Deregistration

directly or indirectly based upon, attributable to, or in consequence of in so far as the Insured is required by law to maintain a statutory registration in order to be entitled to practice or provide the Professional Services, Claims arising from acts, errors or omissions by or on behalf of the Insured subsequent to the suspension or cancellation of such registration.

6.4 Fines and Penalties

directly or indirectly based upon, attributable to, or in consequence of punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limit to, civil penalties.

6.5 Fraud and Dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an Insured or their consultants, sub-contractors ; or

b) any act or omission of an Insured or their consultants, sub-contractors, committed or alleged to have been committed with a reckless disregard for the consequences thereof; or

c) any wilful breach of any statute, contract or duty by an Insured or their consultants, sub-contractors.

6.6 Insolvency

directly or indirectly based upon, attributable to, or in consequence of the Insured's insolvency, bankruptcy or liquidation.

6.7 Jurisdictional Limits

a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or

b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates.

6.8 Mergers or Acquisitions

directly or indirectly based upon, attributable to, or in consequence of advice in relation to mergers or acquisitions.

6.9 Nuclear

directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or any nuclear waste from the combustion of any nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

6.10 Other Insurances

directly or indirectly based upon, attributable to, or in consequence of:

a) the Insured's liability as an employer; or
b) actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any Insured against any Employee or employment applicant; or
c) the Insured's functions and duties as a director and / or officer of the Insured or any legal entity, corporation or other incorporated body; or
d) the occupation of land or buildings by an Insured; or
e) the Insured's liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.11 Pollutants

directly or indirectly based upon, attributable to, or in consequence of the actual or threatened discharge, dispersal, seepage, release or escape of any Pollutant into or onto real or personal property, water or the atmosphere.

6.12 Prior or Pending

a) made, threatened or intimated against an Insured prior to the Period of Insurance; or
b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
   i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
   ii) of which an Insured first became aware prior to the Period of Insurance, and which such Insured knew or ought reasonably to have known had potential to give rise to a Claim under this Policy.

6.13 Related or Associated Entities

brought or maintained by or on behalf of:

a) an Insured or any Subsidiary or parent of an Insured; or
b) any person who, at the time of the act, error or omission giving rise to the Claim is a Family Member or company owned or controlled by a Family Member unless such person or company is acting without any prior direct or indirect solicitation or cooperation of an Insured.
c) any company or trust which is operated or controlled by the Insured or its nominees or trustees and which an Insured has a direct financial interest.

6.14 Retroactive Date

directly or indirectly based upon, attributable to, or in consequence of work performed prior to the Retroactive Date specified in the Schedule.

6.15 Sale or Supply of Goods

directly or indirectly based upon, attributable to, or in consequence of the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied by the Insured.

6.16 Territorial Limits

directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

6.17 Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of Terrorism.

This exclusion operates in connection with any act of Terrorism regardless of any other cause or event and regardless of the sequence of the act of Terrorism and the other cause or event.

6.18 Trading Debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an Insured or any guarantee given by an Insured for a debt.

6.19 War

directly or indirectly based upon, attributable to, 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 nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

6.20 Professional Fees

directly or indirectly based upon, attributable to any matter relating to the Insured's entitlement or otherwise to fees or charges for work performed.

6.21 Cyber and Data

6.21.1 directly or indirectly based upon, attributable to, or in consequence of any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:

a) a Cyber Act; or

b) any partial or total unavailability or failure of any Computer System; provided the Computer System is owned or controlled by the Insured or any other party acting on behalf of the Insured in either case; or

c) the receipt or transmission of malware, malicious code or similar by the Insured or any other party acting on behalf of the Insured.

6.21.2 directly or indirectly based upon, attributable to, or in consequence of any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:

a) to the Insured or any other party acting on behalf of the Insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the Insured;

b) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by the Insured or any other party acting on behalf of the Insured.

6.21.3 directly or indirectly based upon, attributable to, or in consequence of any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of Data Protection Law by the Insured or any other party acting on behalf of the Insured.

6.21.4 directly or indirectly based upon, attributable to, or in consequence of any cover for costs of reconstituting or recovering lost, inaccessible, or damaged documents owned or controlled by the Insured or any other party acting on behalf of the Insured in this policy shall not apply to Data.

For the purposes of this clause 6.21 the following definitions apply:

Computer System

shall mean any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Cyber Act

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

Data

shall mean information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

Data Protection Law

shall mean any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

6.22 Communicable Disease

Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

6.23 Assumed Duty or Obligation

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by an Insured by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the Insured would have incurred in the absence of such contract, warranty, guarantee or indemnity.

6.24 Kerbside Valuations

directly or indirectly based upon, attributable to, or in consequence of any kerbside valuation or restricted valuation, unless conducted in strict compliance with the API guidelines.

6.25 Pre-Purchase and Pest Inspection

directly or indirectly based upon, attributable to, or in consequence of any act error or omission by the Insured in respect of pre-purchase building inspections or pest inspections.

6.26 Properly Qualified Professional

We shall not be liable under the Policy to provide Indemnity in respect to any Claim against any Insured arising directly or indirectly based upon, attributable to, or in consequence of any actions by the Insured, its Employees or their Contractors, that are not fully qualified and/or hold equivalent professional qualifications to provide the Professional Services being performed or supervised.

6.27 Property Valuation

We shall not be liable under the Policy to provide Indemnity in respect to any Claim against any Insured arising directly or indirectly based upon, attributable to, or in consequence of any valuation made by or on behalf of the Insured.

Section 7: Claims Conditions

7.1 Claims Notification

The Insured shall, as soon as practicable and prior to expiry of the Period of Insurance, give Us written notice of any Claim made against the Insured. Furthermore, every letter, demand, writ summons and legal process pertaining to such Claim shall be forwarded to Us as soon as practicable after receipt.

All Claim notifications should be forwarded to;

The Claims Manager, Agile Underwriting Services Pty Ltd
Level 5, 63 York Street, Sydney, NSW 2000
Telephone: 1300 705 031
Or Email: claims@withagile.com

It is the Insured's responsibility to ensure such notification has been forwarded to and received by Agile Underwriting Services Pty Ltd.

7.2 Claims Mitigation and Co-operation

a) If the Insured, either prior to or during the Period of Insurance, becomes aware of a situation which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

b) The Insured shall frankly and honestly disclose to Us all relevant information and, in addition shall provide assistance to Us, as We, may require to enable Us to investigate and to defend any Claim under this Policy and/or to enable Us to determine Our liability under this Policy.

c) Other than costs & expenses incurred by Us to enable Us to determine our liability under this Policy, compliance with this condition shall be at the Insured's own cost, unless otherwise agreed in writing by Us.

7.3 Claims Conduct

a) We shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.

b) The Insured agrees not to settle any Claim, incur any costs & expenses or Investigation Costs & Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without Our written consent, such consent not to be unreasonably withheld. We shall not be liable for any settlement, costs & expenses, Investigation Costs & Expenses, admission, offer or payment, or assumed obligation to which they have not consented in writing.

c) We may, if We believe that any Claim will not exceed the Deductible, instruct the Insured to conduct the defence of the Claim. In such situation, We will reimburse the Insured for all reasonable Costs & Expenses in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Deductible.

7.4 Senior Counsel Clause

a) We and the Insured shall not be required to contest any legal proceedings unless a Senior Counsel, to be mutually agreed upon by Us and the Insured, shall advise that such proceedings should be contested. Failing agreement for the appointment, the Senior Counsel is to be appointed by the President of the State Bar Association.

b) In formulating such advice, the Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs & Expenses and the prospects of the Insured successfully defending the Claim.

c) The cost of such Senior Counsel's opinion shall be regarded as part of the Costs & Expenses to be borne by Us.

7.5 Right to Contest

In the event that We recommend a settlement in respect of any Claim, and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim.

In electing to contest such Claim, We and the Insured can invoke clause 7.4, in order to obtain advice from Senior Counsel as to proposed settlement and whether the Claim should be settled.

Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Costs & Expenses incurred with Our written consent up to the date of such election, less the Deductible. We may at any time pay to You the amount for which the Claim or Claims can be settled. Upon such payment, We will relinquish conduct or control of and be under no further liability under this Policy in connection with such Claim or Claims except for Costs and Expenses incurred by Us or by You with Our written consent, less the Deductible, prior to the date of such payment.

7.6 Multiple Claims

All Claims arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one Claim for the purpose of this Policy.

7.7 Subrogation

a) If any payment is made under this Policy We are subrogated to the Insured's rights or recovery and the Insured must assist and provide such information as We reasonably require to exercise such rights.

b) We agree not to exercise any such rights against any director, principal or Employee of the Insured unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, principal or Employee.

c) The Insured shall not without Our prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim covered by this Policy.

Section 8: General Conditions

8.1 Alteration to Risk

You must notify Us as soon as reasonably practicable of any material change in the risk Insured by this Policy that You know or ought reasonably to have known is relevant to Our decision to insure You, and the terms on which we insure You.

We are entitled to amend the terms of this Policy and / or charge an additional Premium based on Our assessment of any change in the risk Insured by this Policy.

If We do amend the terms of this Policy and/or charge an additional Premium, we will issue You with a new Policy wording, or other compliant document within 14 days.

If You decide to cancel the Policy, then clause 1.9 will apply.

A material change in the risk shall include, but is not limited to;

a) an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding up proceedings;

b) any material changes to the nature of the Professional Services offered by the Insured;

c) any material changes in the Insured's business.

8.2 Assignment

This Policy cannot be assigned by the Insured without Our written consent.

8.3 Cancellation

a) The Insured may cancel this Policy at any time in writing to Us. Upon receipt of such request We will retain a short period Premium calculated at the pro rata portion of the annual Premium for the time they have been on risk and the Insured shall receive a refund of any balance of the Premium actually paid.

b) We may cancel this Policy in accordance with the *Insurance Contracts Act 1984*.

c) If there have been any Claims made under the Policy no refund shall be given.

8.4 Deductible

We shall only be liable for that part of each and every Claim (which includes all Costs and Expenses incurred) which exceeds the amount of the Deductible as specified in the Schedule subject at all times to the Limit of Indemnity specified in the Schedule.

The Deductible shall be borne by the Insured at their own risk.

Where the Deductible is specified to be inclusive of Costs and Expenses, the Insured shall pay the Costs and Expenses as they are incurred, up to the amount of the Deductible.

Where the Deductible is specified to be exclusive of Costs and Expenses, the Deductible shall not apply to the Costs and Expenses incurred.

If any expenditure is incurred by Us which by virtue of this clause is the responsibility of the Insured then such amount shall be reimbursed to Us by the Insured forthwith.

8.5 GST Basis of Settlement

The Insured must inform Agile of the extent to which the Insured is entitled to an input tax credit for the premium each time that the Insured makes a claim under this policy. No payment will be made to the Insured for any GST liability that arises on the settlement of a claim under this Policy when the Insured has not informed Agile of their entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy (including the schedule and any endorsements attached hereto) to the contrary, Agile's liability will be calculated after considering:

a) any input tax credit to which the Insured, or any claimant against the Insured, is entitled for any acquisition relevant to a claim paid under this Policy; and
b) any input tax credit to which the Insured, or any claim made against the Insured, would have been entitled were the Insured or the claimant to have made a relevant acquisition; and
c) the GST exclusive amount of any supply made by the Insured which is relevant to the Insured's claim.

If the applicable limit of liability is not sufficient to cover the Insured's claim, Agile will only pay GST (less any relevant input tax credit) that relates to Agile's proportion of the Insured's claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the
A New Tax System (Goods and Services Tax) Act 1999.

This clause is not intended to vary, alter, waive or extend any terms, conditions, exclusions, or definitions of this Policy other than as stated in this clause.

8.6 Governing Law

This Policy is governed by the law of the territory or State where the Policy was issued, which is stated in the Schedule. The courts of that place have jurisdiction in any dispute about or under this Policy.

8.7 Interpretation

In this Policy:

a) the single includes the plural and the masculine includes the feminine and vice versa
b) the titles and headings to the various sections of the Policy are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

8.8 Limit of Indemnity

a) Our total liability for any one Claim, including Costs and Expenses, will not exceed the Limit of Indemnity specified in the Schedule, and Our total liability in the aggregate in respect of all Claims, during the Period of Insurance, will not exceed the Aggregate Limit of Indemnity specified in the Schedule.
b) Where the Limit of Indemnity is specified in the Schedule as costs exclusive, We will pay, Costs and Expenses, in addition to the Limit of Indemnity, an amount not exceeding the Limit of Indemnity.
c) Where the Limit of Indemnity is specified in the Schedule as costs inclusive, Costs and Expenses, shall be included in, and not in addition to, the Limit of Indemnity specified in the Schedule.
d) This clause does not increase any sub-limit in the Policy.

8.9 Other Insurance

If any Claim arises under the Policy where there is any other insurance policy in force, covering the same Claim, the Insured shall promptly provide Us full details of such other insurance, including the identity of the insurer, the policy number and such further information as We may reasonably require.

Subject to the *Insurance Contracts Act 1984*, this Policy will attach in excess of such insurance.

8.10 Reinstatement of the Limit of Indemnity

If the Limit of Indemnity is either partially or totally exhausted by the payment of a Claim under this Policy, We agree to reinstate the Limit of Indemnity by an amount equal to the Limit of Indemnity
(or a multiple of such Limit of Indemnity if there is more than one reinstatement specified in the Schedule) provided that:

a) Our total liability in respect of all Claims under this Policy shall not exceed the Aggregate Limit of Indemnity;
b) such reinstatement is only available for subsequent Claims totally unrelated to those that give rise to the partial or total exhaustion of the Limit of Indemnity.

8.11 Service of Suit Clause (Australia)

The Underwriters accepting this Insurance agree that:

i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
ii) any summons notice or process to be served upon the Underwriters may be served upon:

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

    who has authority to accept service on the Underwriters' behalf;

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

In the event of a Claim arising under this insurance notice should be given as soon as possible to:

The Claims Manager, Agile Underwriting Services Pty Ltd
Level 5, 63 York Street, Sydney, NSW 2000

Or Email: Claims@withagile.com

8.12 Severability and Non-Imputation

Where this Policy insures more than one party, any failure on the part of any of the parties to:

a) comply with the duty of disclosure under the *Insurance Contracts Act 1984*;
b) comply with any obligation under this Policy (other than the obligation to pay Premium); or
c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this Policy, provided that such remaining part of parties shall:

i) be entirely innocent of and have no prior knowledge of any such failure; and
ii) as soon as practicable after becoming aware of any such failure, advise Us in writing of all its relevant circumstances.

8.13 Variation of the Policy

No variation of this Policy will be effective, unless made by Endorsement which is signed by a properly authorised employee of Agile Underwriting Services Pty Ltd.

8.14 *Australia Terrorism Insurance Act 2003*

The Insurer have treated this Insurance (or part of it) as an Insurance to which the *Australia Terrorism Insurance Act 2003 (ATIA)* applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any “eligible terrorism loss” as defined in ATIA.

Any coverage established by ATIA is only in respect of any “eligible terrorism loss” resulting from a
“terrorist act” which is a “declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

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

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

8.15 Sanction and Limitation Exclusion

No Insurer shall be deemed to provide cover and no Insurer shall be liable to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Australia.

Section 9: Definitions

9.1 Agile Underwriting Services Pty Ltd

shall mean Agile Underwriting Services Pty Ltd, ABN 48 607 908 243, AFSL 483374

9.2 Aggregate Limit of Indemnity

shall mean the amount shown as the Aggregate Limit of Indemnity in the Schedule.

9.3 Bodily Injury

shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

9.4 Claim

shall mean:

a) the receipt by the Insured of any demand for compensation made by a third party against the Insured.

b) any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross-Claim, counter Claim or third or similar party notice served upon the Insured which contains a demand for compensation made by a third party against the Insured.

9.5 Costs & Expenses

shall mean the reasonable legal costs and other expenses incurred by or on behalf of the Insured or by Us in the investigation defence or settlement of a Claim.

9.6 Court Attendance Costs

shall mean the reasonable costs incurred by the Insured in attending a civil proceeding as a witness in a Claim. These costs shall include, but not be limited to travel expenses, locum expenses, meals, and accommodation.

9.7 Deductible

shall mean the amount shown as the Deductible in the Schedule. The Deductible applies to all amounts payable under this Policy including the indemnity provided under Clause 2.2 (Costs and Expenses).

9.8 Documents

shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

9.9 Employee

shall mean any person employed under a contract of service or apprenticeship with the Insured during or prior to commencement of the Period of Insurance.

9.10 Enquiry Costs

shall mean the reasonable legal Costs and Expenses incurred by the Insured arising out of any notice from an inquiring body requiring a response from the Insured or requiring the Insured's attendance at an investigation, inquiry or hearing before the inquiring body.

9.11 Family Member

shall mean:

a) any spouse, domestic partner, or companion;
b) any parent, or parent of the spouse, domestic partner or companion;
c) any sibling or child;

of an Insured.

9.12 Insured

shall mean:

a) the Named Insured;
b) any person who is, during the Period of Insurance, a principal, partner or director of the Named Insured but only in respect of work performed while a principal, partner or director of the Named Insured and their predecessors in the Professional Business;
c) any person who is, during the Period of Insurance, and Employee of the Named Insured but only in respect of work performed while an Employee of the Named Insured; or
d) any former principal, partner, director or Employee of the Named Insured, but only in respect of work performed while a principal, partner, director or Employee of the Named Insured;
e) any Subsidiary of the Named Insured named in the Proposal;
f) the estate, heirs, legal representatives or assigns of an Insured in the event of the death or incapacity of that Insured.

9.13 Investigation Costs & Expenses

shall mean legal costs and other expenses incurred by or on behalf of the Insured or by Us arising out of any legally compellable attendance by an Insured at any official investigation, examination or enquiry in relation to the conduct of the Professional Services where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a Claim covered by this Policy.

9.14 Limit of Indemnity

shall mean the limit of Our liability under this Policy as specified in the Schedule.

9.15 Named Insured

shall mean the person, persons, partnership, company, corporation or other entity specified as the Named Insured in the Schedule.

9.16 Period of Insurance

shall mean the period specified in the Schedule.

9.17 Policy

shall mean:

a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;

b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and

c) the Proposal.

9.18 Pollutants

shall mean:

a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, alkalis, chemicals; or

b) any waste materials including materials recycled, reconditioned or reclaimed; or

c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.

9.19 Premium

shall mean the Premium specified in the Schedule or in any endorsement to the Schedule.

9.20 Privacy Breach

shall mean a common law breach of confidence, infringement, or violation of any rights to privacy, including but not limited to breach of the Insured's privacy statement, breach of a person's right of publicity, false light, intrusion upon a person's seclusion, public disclosure of a person's privacy information, or misappropriation of a person's picture or name for commercial gain.

9.21 Professional Services

shall mean the profession, as specified in the Schedule, which is conducted by the Named Insured.

If the Named Insured should change its name and there is no other change which materially alters the risk, the Insured's profession will continue to be covered by this Policy.

9.22 Property Damage

shall mean damage to or loss or destruction of tangible property or loss of use thereof.

9.23 Proposal

shall mean the Proposal made by the Insured to Us containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

9.24 Retroactive Date

shall mean the Retroactive Date shown in the Schedule.

9.25 Schedule

shall mean the Schedule to this Policy.

9.26 Senior Counsel

shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

9.27 Subsidiary

shall mean:

a) any entity which by virtue of any applicable legislation or law is deemed to be a Subsidiary of the Named Insured specified in the Schedule; or

b) any entity over which a Named Insured is in a position to exercise effective direction or control.

9.28 Statutory Liability

shall mean pecuniary penalties awarded against You in the jurisdictions, and pursuant to the laws, of Australia and New Zealand for a strict liability offence in connection with:

a) A breach of environmental laws;

b) The discharge, release, dispersal or escape of Pollutants

c) A breach of occupational health and safety laws or regulations

And with respect to (a) above the property damage exclusion contained in Exclusion 6.2 Bodily Injury and Property Damage shall not apply;
And with respect to (b) above Exclusion 6.11 Pollutants shall not apply;
And with respect to (c) above the bodily injury exclusion contained in in Exclusion 6.2 Bodily Injury and Property Damage shall not apply.

9.29 Sub-Limit of Indemnity

shall mean a sub-limit of indemnity which is set out in the Schedule and/or in this Policy wording and which is applicable to any one Claim under a specified Insuring Clause. Any Sub Limit of Indemnity is included in and does not apply in addition to the Limit of Indemnity and is also subject to the Aggregate Limit of Indemnity.

9.30 Terrorism

shall mean an act, including by not limited to the use of force or violence and / or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and / or put the public, or any section of the public, in fear.

9.31 We or Us or Our

shall mean certain underwriters at Lloyd’s led by Agile Syndicate 2427 managed by Asta Managing Agency Ltd, through their coverholder Agile Underwriting Services Pty Ltd ABN 48 607 908 243. AFSL 483374

9.32 You/Your

shall mean the Insured.