



**KEYSTONE**

# **Commercial Legal Expenses Wording**

**Keystone Underwriting Pty Ltd**

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## Important Information

This Policy is issued by:

Keystone Underwriting Pty Ltd ABN 78 601 944 764 (**Keystone**)

Keystone Underwriting Pty Ltd is a Corporate Authorised Representative (No. 000468712) of:

Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFS License No: 518244

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### Who is the Insurer?

Certain Underwriters at Lloyd's ("Insurer") will be providing the financial service. **Keystone** is authorised to quote, bind and issue Certificates of Insurance under a Binding Authority Agreement (Binder) granted to **Keystone** by the **Insurer**. **Keystone** will provide details of the syndicate numbers and the proportions underwritten by them on request.

### General Insurance Code of Practice

Lloyd's supports the General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry.

### What makes up the Insurance Contract?

This contract of insurance is made up of the **Schedule**, this **Policy** and any **Endorsements** that **Keystone** issues when an application is accepted or an existing **Policy** is renewed or amended.

### Significant Features, Benefits and Exclusions

This **Policy** provides many significant features and benefits, subject to Conditions and Exclusions. Exclusions apply to this **Policy** and all of them are important. It is important that this **Policy** is read carefully to be aware of and understand the extent of cover that it offers. It will give full details of the Exclusions.

### Significant Risks

The **Insured** should make sure that the sum insured and the limits to be purchased will be sufficient. All the terms and conditions contained in this **Policy** need to be understood.

### Claims Made Policy

This **Policy** is issued by **Keystone** on a claims made and notified basis. This means that it only covers claims first made against an **Insured** during the **Period of Insurance** and notified to **Keystone** in writing during the **Period of Insurance**. The **Policy** does not provide cover for any claims made against an **Insured** during the **Period of Insurance** if at any time prior to the **Period of Insurance** starting, an **Insured** was aware of facts which might give rise to those claims being made against them.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where an **Insured** gives notice in writing to an insurer during the **Period of Insurance** of facts that might give rise to a claim against the **Insured**, the **Insurer** cannot refuse to pay a claim which arises out of those facts, by reason only that the claim is made after the **Period of Insurance** has expired.

### Alteration to Risk and Deregistration

This **Policy** requires an **Insured** to notify **Keystone** within thirty (30) days of any material change to the business, or in the event

of insolvency or bankruptcy. This **Policy** requires an **Insured** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of an **Insured's** statutory registration. **Claims** arising from conduct which occurs subsequent to the cancellation, suspension or termination of the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the **Insured's** profession are excluded from indemnity under this **Policy**. However, this condition does not apply if the suspension relates purely to the late payment of registration fees.

### Doctrine of Utmost Good Faith

Every insurance contract is subject to this doctrine which requires the parties to the contract to act toward each other with the utmost good faith. Failure to do so may prejudice any claims and/or the continuation of the insurance contract.

### Duty of Disclosure

The **Insured** has a duty to tell **Keystone** anything they know, or could reasonably be expected to know, may affect **Keystone's** decision to provide cover and on what terms, before entering into an insurance contract. This duty continues until **Keystone** agree to provide insurance. The same duty applies before renewal, extension, variance or reinstatement of an insurance contract.

### Limits of Disclosure

The **Insured** does not have to disclose to **Keystone** any matter:

- (a) that diminishes the risk to be undertaken by **Keystone**; or
- (b) that is of common knowledge; or
- (c) that **Keystone** knows or, in the ordinary course of **Keystone's** business, ought to know; or
- (d) for which **Keystone** has given a waiver.

### Non-Disclosure

**Keystone** may cancel the **Policy** or reduce the amount paid to the **Insured** if a claim is made, or both if the **Insured** does not tell **Keystone** anything they are required to. **Keystone** may refuse to pay a claim and treat the contract as if it never existed if the **Insured's** failure to tell **Keystone** is fraudulent.

### Change of Circumstances

The terms and conditions of this **Policy** will be based on information the **Insured** provided to **Keystone**. It is essential **Keystone** are advised of any material change that occurs to this information prior to the inception of this **Policy**. Failure to do so by the **Insured** may prejudice any subsequent **Claims** under the **Policy** and/or jeopardise the continuation of the insurance contract.

## Buying Insurance

Set out below are important matters that apply to the initial enquiry, buying of insurance, and renewal of cover. Defined terms are the same as in the Policy.

### Information that **Keystone** ask

**Keystone** will only ask for and consider relevant information when assessing the **Insured's** application for cover.

### Assessing Applications

The **Insured** will have access to information that **Keystone** has relied on in assessing their application and an opportunity to correct any mistakes or inaccuracies. **Keystone** may decline to release information in special circumstances, but will not do so unreasonably. **Keystone** will give reasons in these circumstances, and the **Insured** will have the right to request **Keystone** to review the decision through **Keystone's** complaints handling procedures. **Keystone** will provide reasons in writing upon request.

### Mistakes

**Keystone** will immediately initiate action to correct an error or mistake in assessing the **Insured's** application for cover where it is identified.

### Misrepresentation

**Keystone's** sales process will be conducted in a fair, honest and transparent manner.

### Declining Cover

If **Keystone** cannot provide insurance cover, **Keystone** will:

- give reasons; and
- refer the entity/person seeking insurance to another insurer, AFCA or NIBA, for information about alternative insurance options (unless they already have someone acting on their behalf).

**Keystone** will make available information about **Keystone's** complaints handling procedures if the entity/person is unhappy with **Keystone's** decision.

### Policy Information

Information about **Keystone's** policy wordings will be available when the **Insured** buy insurance from **Keystone** as well as on request. They will also be available on **Keystone's** website at [www.keystoneunderwriting.net.au](http://www.keystoneunderwriting.net.au).

### Subrogation

The **Insured** may prejudice their rights regarding a claim if, without prior approval from **Keystone**, the **Insured** makes an agreement with a third party that would prevent **Keystone** from recovering any applicable loss (in whole or in part) from that, or another party.

This **Policy** contains provisions that have the effect of excluding or limiting **Keystone's** liability for a claim under this **Policy** if you have entered into any agreement that excludes, limits or delays the **Insured's** right to recover damages from another party in respect of such claim.

### Cost of Policy

The cost of this **Policy** is made up of premium plus any applicable policy fees, government taxes and charges. **Keystone** may cancel this **Policy** if the **Insured** fails to pay the total premium due.

### Deductibles

The **Insured** may be required to pay a deductible or excess if a claim is made under this **Policy**. Details of applicable deductibles or excess are provided in the **Schedule**. This **Policy** sets out the terms relating to the payment of deductibles or excesses.

### Taxation

All taxes and charges are shown as separate items (e.g. fire and emergency services levy, stamp duty depending upon location and GST).

### Cooling-off Period

The **Insured** has the right to cancel this **Policy** with **Keystone** within 14 days of the date that the **Policy** is accepted, unless a claim is made. **Keystone** will refund the full amount of the premium less any duties or taxes payable if this cancellation occurs during the cooling-off period. This **Policy** will be terminated from the date **Keystone** receive the request to cancel.

### Making a Claim

Benefits are payable if the **Insured** suffers a loss that is covered under this **Policy** during the **Period of Insurance**, except if an Exclusion or Condition applies. The **Insured** must immediately notify **Keystone** or their insurance adviser if there is a loss under this **Policy**.

To make **Claim** please contact **Keystone** by telephone at 1300 946 530 or email [claims@ksua.com.au](mailto:claims@ksua.com.au) or write to us at Suite 17, 296 Bay Road, Cheltenham, VIC 3192.

### Cancelling the Policy Before the Due Date

The **Insured** may cancel this **Policy** at any time by notifying us in writing, detailing the date that the cancellation will take effect. **Keystone** will refund any unearned premium to the **Insured** or their insurance adviser within 15 working days after the date of cancellation. Unearned premium will be computed pro rata for the unexpired term of this **Policy**, unless agreed in advance through the insurance adviser and set out in this **Policy**.

### Privacy

**Keystone** are committed to safeguarding and protecting the **Insured's** privacy. **Keystone** is bound by the provisions of the *Privacy Act 1988* which sets out the standards to meet in the collection, use and disclosure of personal information.

The Act defines "personal information" as "information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion".

### Purpose of Collection

**Keystone** will only use personal information the **Insured** provides to quote on and insure risks and matters incidental thereto, including investigating and managing claims.

It may be necessary for **Keystone** to provide the **Insured's** personal information to others, such as other insurers or reinsurers, claims investigators, lawyers and other professionals, and government bodies. **Keystone** will not under any circumstances trade, rent or sell the information.

**Keystone** cannot properly quote insurance and cannot insure the **Insured** if they do not provide **Keystone** with complete, accurate and up-to-date information. If the **Insured** provide **Keystone** with personal information about anyone else, **Keystone** will rely on the **Insured** to have told them that their information will be provided to **Keystone**, to whom **Keystone** may provide it, the purposes for which **Keystone** will use it and that they can access it. **Keystone** relies on the **Insured** to have obtained their consent on these matters if the information is sensitive.

### Access to Information

The **Insured** can check the personal information **Keystone** holds about them at any time. Requests for access can be made in writing to:

The Privacy Officer  
Keystone Underwriting Australia Pty Ltd  
17/296 Bay Road  
Cheltenham, VIC 3192

**Keystone** will keep the **Insured** informed of any delays in responding to the **Insured's** request throughout the process.

## Complaints

**Keystone** and the **Insurer** take all complaints seriously and have established internal dispute resolution procedures to ensure complaints are handled fairly, honestly and in a timely manner in accordance with the General Insurance Code of Practice.

The Code sets out a two-stage process:

<p><b>Stage One</b> The <b>Insurer</b> will respond to the <b>Insured's</b> Complaint within 15 business days of the date of receipt of the Complaint, provided <b>Keystone</b> has all the necessary information and have completed any investigation required.</p> <p>If the <b>Insurer</b> cannot respond within 15 business days because <b>Keystone</b> does not have all necessary information or has not completed the investigation:</p> <ul style="list-style-type: none"> <li>(a) the <b>Insurer</b> will let the <b>Insured</b> know as soon as reasonably practicable within the 15-business-day timeframe, and agree a reasonable alternative timetable with the <b>Insured</b>. The <b>Insurer</b> will advise the <b>Insured</b> of the right to take the Complaint to Stage Two of the Complaints process if the <b>Insurer</b> cannot reach an agreement with the <b>Insured</b> on an alternative timetable; and</li> <li>(b) the <b>Insurer</b> will keep the <b>Insured</b> informed about the progress of the Complaint at least every ten business days, unless agreed otherwise.</li> </ul> <p>The <b>Insurer</b> will respond to the Complaint in writing and advise the <b>Insured</b> of:</p> <ul style="list-style-type: none"> <li>(a) the <b>Insurer's</b> decision in relation to the <b>Insured's</b> Complaint;</li> <li>(b) the reasons for the <b>Insurer's</b> decision;</li> <li>(c) the <b>Insured's</b> right to take the Complaint to Stage Two if the <b>Insurer's</b> decision at Stage One does not resolve the Complaint to the <b>Insured's</b> satisfaction.</li> </ul> <p>If the <b>Insured</b> wishes to make a Complaint, please contact the <b>Insurer</b> at:</p> <p>Compliance Department Antares Managing Agency Limited 21 Lime Street London EC3M 7HB Tel: +44 (0) 20 7959 1900 Email: <a href="mailto:compliance2@qicglobal.com">compliance2@qicglobal.com</a></p>	<p><b>Stage Two – Review by Lloyd's Australia</b> The <b>Insured</b> may take the Complaint to Stage Two if the <b>Insurer's</b> Stage One decision does not resolve it to the <b>Insured's</b> satisfaction or if the <b>Insured</b> is unhappy with the way <b>Keystone</b> are handling it. The <b>Insured</b> can do this at any time during Stage One.</p> <p>Taking the Complaint to Stage Two, the <b>Insured</b> should contact:</p> <p>Lloyd's Australia Limited Level 9 1 O'Connell Street Sydney NSW 2000 Phone: (02) 8298 0753 Email: <a href="mailto:ldraustralia@lloyds.com">ldraustralia@lloyds.com</a></p> <p>Where the complaint is eligible for referral to the Australian Financial Complaints Authority (AFCA) the complaint will generally be reviewed by Lloyd's Australia. Otherwise, the matter will be referred to the Complaints Team at Lloyd's based in the UK.</p>
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The **Insured** may be referred to the Australian Financial Complaints Authority (AFCA) under the terms of the General Insurance Code of Practice if the Complaint remains unresolved. AFCA can be contacted by post at GPO Box 3, Melbourne, Victoria 3001, phone 1800 931 678 or email [info@afca.org.au](mailto:info@afca.org.au). More information can be found on their website [www.afca.org.au](http://www.afca.org.au). The **Insured** will be referred to other proceedings for resolution of other disputes. Details are available from Lloyd's Australia Limited at the address above.

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## Wording

The **Insured** and **Keystone** agree that **Keystone** will provide insurance in accordance with the terms of this **Policy** upon payment of the **Premium** as shown in the **Schedule**, and upon submission by the **Insured** of the **Proposal**, the contents on which **Keystone** will rely.

### 1. Definitions

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- 1.1 **Acts of Parliament** means all Acts of Parliament referred to in this **Policy** and shall include any subsequent amendments, re-enactments or regulations and equivalent legislation enforceable within the **Territorial Limits**.
- 1.2 **Any One Claim** means all **Claims** or possible **Claims** arising from the same original cause, event or circumstance.
- 1.3 **ATO** means the Australian Taxation Office or appropriate government authority or state authority or agency authorised to conduct the relevant activity.
- 1.4 **ATO Investigation** means an investigation into the **Insured's** taxation affairs by the **ATO** under **Income Tax Legislation**.
- 1.5 **Appointed Representative** means a lawyer or other appropriately qualified person appointed to act for the **Insured** in accordance with the terms of this **Policy**.
- 1.6 **Claim** means a claim under this **Policy** for **Legal Expenses**.
- 1.7 **Co-Insurance** means the amount specified in the **Schedule** that the **Insured** must pay expressed as a percentage of **Legal Expenses** in respect of **Any One Claim** above any **Excess** specified in the **Schedule** before **Keystone** shall be liable to make any payment under this **Policy**.
- 1.8 **Construction Contract** means a contract to provide construction work as defined by each of the Building and Construction Industry Security of Payment Acts as they apply in each of the States or Territories of the Commonwealth of Australia. For the avoidance of doubt supply of a construction contract to a residential occupier will be deemed a **Construction Contract** for the purposes of this **Policy**.
- 1.9 **Contracting Party** means a person, firm or company domiciled within the **Territorial Limits** with whom the **Insured** have a direct contractual relationship.
- 1.10 **Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.
- 1.11 **Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by the **Insured** and includes any trainee, volunteer, casual, part-time, seasonal, temporary, or work experience personnel.
- 1.12 **Excess** means the amount specified in the **Schedule** which the **Insured** must pay in respect of **Legal Expenses** in respect of **Any One Claim** before **Keystone** shall be liable to make any payment.
- 1.13 **Fringe Benefits Dispute** means a dispute with the **ATO** regarding the amount of tax payable by the **Insured** or an **Employee** under **Income Tax Legislation** in respect of fringe benefits.
- 1.14 **GST Dispute** means a dispute with the **ATO** regarding the amount of GST payable by the **Insured**.
- 1.15 **Income Tax Legislation** means the Income Tax Assessment Act 1936, The Income Tax Assessment Act 1997, The Fringe Benefits Tax Assessment Act 1986 and Fringe Benefits Act 1986, Sales Tax Assessment Act 1992, Taxation Administration Act 1953, Superannuation Charge Act 1992, A New Tax System (Goods and Services Tax) Act 1999, or any other Commonwealth, State or Territory legislation dealing with income tax or any other legislation replacing the above legislation.

- 1.16 Insured** means:
- 1.16.1** the person or entity named as the insured in the **Schedule**; and/or
  - 1.16.2** any **Subsidiary**; and/or
  - 1.16.3** any past and/or present **Employee** of the **Insured** or **Subsidiary**, but only in his or her capacity as such; and/or
  - 1.16.4** any past and/or present **Principal** of the **Insured** or **Subsidiary**, but only in his or her capacity as such; and/or
  - 1.16.5** the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.
- 1.17 Keystone** means Keystone Underwriting Pty Ltd ABN 78 601 944 763 as Corporate Authorised Representative (No. 000468712) of Keystone Underwriting Australia Pty Ltd ABN 59 634 715 674 AFSL 518224 which is acting on behalf of the **Insurer**.
- 1.18 Legal Expenses** means any professional fees, expenses and other disbursements reasonably incurred by the **Appointed Representative** with **Keystone's** prior written consent; and any costs incurred by other parties for which the **Insured** are held liable in Court or tribunal proceedings to pay these costs or become liable to pay these costs under a settlement made with another party with **Keystone's** prior written consent but excluding any costs which the **Insured** may be ordered to pay by a Court of criminal jurisdiction.
- 1.19 Limit of Liability** means **Keystone's** maximum liability under this **Policy** which is limited to the amounts specified in the **Schedule** for:
- 1.19.1 Any One Claim**; or
  - 1.19.2 All Claims** notified during the **Period of Insurance**.
- 1.20 Minimum Sum in Dispute** means the sum in dispute between the **Insured** and the **Contracting Party** as specified in the **Schedule** below which **Keystone** shall not be liable to provide cover under this **Policy**.
- 1.21 Period of Insurance** means the period specified in the **Schedule**, unless terminated earlier.
- 1.22 Policy** means the **Schedule**, the terms of this document and any **Endorsement**.
- 1.23 Premium** means the amount specified in the **Schedule**.
- 1.24 Principal** means a sole practitioner, a partner of a firm or a director of a company.
- 1.25 Principal Insured** means the **Insured**, or if the **Insured** is more than one person or entity, the first person or entity listed as the '**Insured**' in the **Schedule**.
- 1.26 Professional Services** means the professional services as specified in the **Schedule**.
- 1.27 Property** means land and/or buildings owned or occupied by the **Insured** for which the **Insured** are legally responsible.
- 1.28 Proposal** means the written proposal or declaration made by the **Insured** to **Keystone** containing particulars and statements together with other information provided by the **Insured**.
- 1.29 Retroactive Date** means the date specified in the **Schedule**.
- 1.30 Schedule** means the current schedule issued by **Keystone** to the **Insured**.
- 1.31 Statutory Licence** means a licence or certificate of registration issued under statute, statutory instrument or by a Government or Local Authority to the **Insured** provided that this licence or certificate is necessary to engage in the **Insured's Professional Services**.
- 1.32 Subsidiary** means a subsidiary, as defined in the *Corporations Act 2001*, of the **Insured**, which:
- 1.32.1** was a subsidiary at the commencement date of the **Period of Insurance**; or
  - 1.32.2** is created by the **Insured** during the **Period of Insurance**; or
- 1.33 Territorial Limits** means as specified in the **Schedule**.
- 1.34 Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

## 2. Conditions Precedent

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The **Insured** must comply with the following Conditions Precedent, unless **Keystone** agree in writing to the contrary, before any contractual duty that **Keystone** might have to the **Insured** under this **Policy** arises.

### Notification of Claims

- 2.1 It is a condition precedent to **Keystone's** liability that **Keystone** be notified by the **Insured** in writing during the **Period of Insurance** and as soon as practicable after the **Insured** are aware of any cause, event or circumstance which has given or may give rise to a **Claim**, dispute or legal proceedings involving the **Insured**.
- 2.2 Where this notification has been given, **Keystone** agree to treat any subsequent **Claim** in respect of the same cause, event or circumstance as notified as though the subsequent **Claim** had been notified during the **Period of Insurance**.

### Keystone's Consent

- 2.3 It is a condition precedent to **Keystone's** liability that **Keystone's** consent to incur **Legal Expenses** must be obtained in writing prior to the **Insured** incurring any **Legal Expenses**. This consent will be given by **Keystone** if the **Insured** can satisfy **Keystone** that:
- 2.3.1 it is reasonable to incur **Legal Expenses** having regard to the proportionality between the remedy claimed and the **Legal Expenses** to be incurred; and
- 2.3.2 where the **Insured** are pursuing a **Claim**, there are reasonable prospects of proving the other party's legal liability and of recovering the damages claimed or other legal remedy sought; or
- 2.3.3 where the **Insured** are defending a **Claim**, the other party does not have reasonable prospects of proving the **Insured's** legal liability; or
- 2.3.4 in respect of a criminal prosecution and where the **Insured** pleads guilty, there is a reasonable prospect of a significant mitigation of the **Insured's** sentence or fine.
- 2.4 All future payments will cease in respect of **Legal Expenses** related to that **Claim** if during the course of a **Claim** the **Insured** ceases to satisfy **Keystone** in respect of the applicable points 2.3.1 to 2.3.4 above.
- 2.5 The decision to grant or withhold **Keystone's** consent will be made on receipt of the following information:
- 2.5.1 a fully completed insurance claim form; and
- 2.5.2 the information and documentation **Keystone** reasonably request; and
- 2.5.3 a legal opinion from the **Appointed Representative** as to the applicable points 2.3.1 to 2.3.4 above; and
- 2.5.4 any advice **Keystone** may deem necessary to take.
- 2.6 **Keystone** may provide assistance in settling disputes or legal proceedings with the **Insured's** agreement, the costs of which will be covered under this **Policy** subject to the payment of the **Excess** and **Co-Insurance** within the **Limit of Liability**.
- 2.7 **Keystone** may require the **Insured** to obtain an opinion from Senior Counsel at the **Insured's** expense assessing the merits of the subject matter of the **Claim** and any legal action. The **Legal Expenses** in obtaining that opinion will be paid by **Keystone** within the **Limit of Liability** if, based upon this opinion, **Keystone** are satisfied in respect of the applicable points 2.3.1 to 2.3.4 above.
- 2.8 **Keystone** undertake to pay the **Insured** in granting **Keystone's** consent, subject to the terms and conditions of this **Policy** and its **Schedule**, but this consent does not imply that all **Legal Expenses** will be paid. In particular, **Legal Expenses** for matters that go beyond the immediate scope of the **Claim** shall be deemed by **Keystone** to fall outside the insurance coverage provided by this **Policy**. **Keystone** reserve the right to limit **Keystone's** consent by time and/or financial amount of **Legal Expenses** and/or stage of proceedings to allow for a review of **Keystone's** continued consent.
- 2.9 **Keystone's** consent will be withdrawn and no insurance coverage under this **Policy** shall be provided for this **Claim** if it is shown, after **Keystone's** prior written consent has been granted, that the **Claim** has not been brought within the terms and conditions of this **Policy** and its



**Schedule.** **Keystone** shall be entitled to recover any **Legal Expenses** previously paid in this case.

- 2.10** **Keystone** will pay **Legal Expenses** incurred after **Keystone's** consent has not been granted (because the **Insured** has not satisfied applicable points 2.3.1 to 2.3.4 above) subject to the terms and conditions of this **Policy** if the **Insured** elects to proceed with the pursuit or defence of a dispute or legal proceedings and if the **Insured** are successful in this pursuit or defence.

#### Disclosure

- 2.11** It is a condition precedent to **Keystone's** liability that the **Insured**:
- 2.11.1** must give the **Appointed Representative** and **Keystone** all necessary cooperation, assistance and information including a complete and truthful account of the facts of the **Claim** and all relevant documentation or other evidence in the **Insured's** possession; and
  - 2.11.2** must provide, obtain or execute all documents as necessary and attend meetings or conferences as requested; and
  - 2.11.3** must instruct the **Appointed Representative** to provide **Keystone** with any information, documents or advice in connection with any **Claim** and the subject matter of any **Claim** even if privileged; and
  - 2.11.4** must instruct the **Appointed Representative** to provide **Keystone** with regular updates on the progress of the subject matter of any **Claim** and inform **Keystone** as soon as practicable if and when any circumstance adversely impacts the factors on which **Keystone** granted **Keystone** consent.
- 2.12** The insurance coverage under this **Policy** may be withdrawn if the **Insured** fails to co-operate with requests by **Keystone** or the **Appointed Representative** or if the **Insured** or the **Appointed Representative** fails to provide **Keystone** with any information in connection with any **Claim** or the subject matter of any **Claim**.

#### Offer of Settlement

- 2.13** It is a condition precedent to **Keystone's** liability that the **Insured** must inform **Keystone** in writing as soon as an offer to settle the subject matter of the **Claim** is received and/or the **Insured** proposes to make an offer of settlement. The **Insured** must consider the **Legal Expenses** incurred or likely to be incurred and recovered in deciding whether to accept or reject any settlement offer.
- 2.14** No insurance coverage under this **Policy** shall be provided if the **Insured** enters into any agreement to settle without **Keystone's** prior written consent (this consent not to be unreasonably withheld) and **Keystone** shall be entitled to recover any **Legal Expenses** previously paid.
- 2.15** No further insurance coverage under this **Policy** shall be provided for the subject matter **Claim** if the **Insured** rejects an offer of settlement which **Keystone** recommend that the **Insured** accept, or the **Insured** make an offer with which **Keystone** do not agree.
- 2.16** **Keystone** may decide at **Keystone's** discretion to pay the **Insured** the amount of damages that the **Insured** are claiming or that are being claimed against **Insured** instead of paying the **Insured** for **Legal Expenses** to pursue or defend the dispute or legal proceedings. **Keystone** will cease to be liable for any further **Legal Expenses** for the subject matter **Claim** where **Keystone** exercise this discretion.

### 3. Sections of Cover

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The Sections of Cover applicable to the **Insured** are specified in the **Schedule**.

**Keystone** will only pay the **Insured** for **Claims** where the dispute or legal proceedings are or would be within the **Territorial Limits**, the **Claim** is notified during the **Period of Insurance**, and the dispute or legal proceedings are in connection with activities within the scope and extent of **Insured Professional Services**.

#### Section A – Commercial Contract Disputes

##### Inclusions - What is Covered

- 3.1 **Keystone** agrees to pay the **Insured** for **Legal Expenses** incurred in the pursuit or defence of any dispute or legal proceedings made by or brought against the **Insured** in a contractual dispute or legal proceedings with a **Contracting Party** over a contract for the sale of goods or a contract for the hire of goods or a contract for the supply of a service within the meaning set out in the Sale of Goods Act provided that:
- 3.1.1 **Legal Expenses** incurred in the pursuit of any dispute or legal proceedings shall be limited to seventy-five percent (75%) of the amount in dispute; and
  - 3.1.2 the amount in dispute exceeds the **Minimum Sum in Dispute**; and
  - 3.1.3 where the contract is a **Construction Contract** the construction operations are carried out or are to be carried out by the **Contracting Party** on **Insured Property** and the **Construction Contract** is for the repair or renovation of the **Property** and the repair and renovation of the **Property** is not part of **Insured's Professional Services**; and
  - 3.1.4 where the dispute or legal proceedings arise from an undisputed debt, the **Insured** have exhausted all reasonable methods of recovery, and the **Appointed Representative** recommends legal action.

##### Exclusions - What is not Covered

- 3.2 **Keystone** shall not be liable to pay the **Insured** in respect of **Claims** arising out of or in connection with:
- 3.2.1 contracts that provide or arrange credit, insurance, securities, guarantees or other financial products and financial services; or
  - 3.2.2 contracts where the liability or right of recovery is incurred by assignment; or
  - 3.2.3 franchise contracts; or
  - 3.2.4 contracts of employment; or
  - 3.2.5 any tenancy or licence to use any real property.

#### Section B – Criminal Prosecution

##### Inclusions - What is Covered

- 3.3 **Keystone** agrees to pay the **Insured** for **Legal Expenses** incurred in:
- 3.3.1 defending a prosecution against the **Insured** in a court of criminal jurisdiction; and
  - 3.3.2 an appeal by the **Insured** against the service of a remedial or stop-work order under the Workplace Safety and Health Act.

##### Exclusions - What is not Covered

- 3.4 **Keystone** shall not be liable to pay the **Insured** in respect of **Claims** arising out of or in connection with any allegation relating to arising from:
- 3.4.1 investigations by the Australian Tax Office; or
  - 3.4.2 offences against the person, including offences of a sexual nature; or
  - 3.4.3 criminal damage; or
  - 3.4.4 dishonesty; or
  - 3.4.5 non-endorsable road traffic offences except tachograph prosecutions and weight prosecutions; or
  - 3.4.6 driving whilst under the influence of alcohol and/or drugs, or speeding; or
  - 3.4.7 failure to insure a motor vehicle as required by law.

## Section C – Employment Disputes

### Inclusions - What is Covered

- 3.5 **Keystone** agree to pay the **Insured** for **Legal Expenses** incurred by the **Insured** in defending legal proceedings brought against the **Insured** by an **Employee, ex-Employee** or prospective **Employee** in respect of their contract of employment with the **Insured** or a breach of employment related legislation.
- 3.6 The **Insured** should seek legal advice:
- 3.6.1 prior to carrying out any disciplinary procedure or action or suspension of an **Employee**; or
  - 3.6.2 prior to dismissal of an **Employee**; or
  - 3.6.3 prior to notifying an **Employee** of their intended retirement date or prior to retiring an **Employee**; or
  - 3.6.4 prior to instituting a redundancy programme and prior to making an **Employee** redundant; or
  - 3.6.5 upon notification formally or informally of a grievance from an **Employee** or **ex-Employee**; or
  - 3.6.6 upon notification formally or informally of a complaint relating to discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex or sexual orientation; or
  - 3.6.7 prior to any actual or proposed variation of the terms and conditions of employment that an **Employee** could reasonably consider to be adverse (including altering the hours or time or place worked or demotion or deduction from or reduction in an **Employee's** remuneration); or
  - 3.6.8 as soon as practicable if an **Employee** leaves their employment with or without written notice; or
  - 3.6.9 Upon receipt of an appeal from an **Employee** or **ex-Employee** against a decision made by a court, tribunal or other similar body.
- 3.7 Failure to seek advice will not invalidate the **Insured's** insurance coverage under this **Policy**, but could decrease the **Insured's** prospects of a successful defence in any subsequent disputes or legal proceedings and the **Insured's** ability to make a **Claim**.

## Section D – Property Disputes

### Inclusions - What is Covered

- 3.8 **Keystone** agrees to pay the **Insured** for **Legal Expenses** incurred in any dispute or legal proceedings made by or brought against the **Insured** provided the **Insured** will suffer financial loss if the **Insured** fails to pursue or defend the dispute or legal proceedings:
- 3.8.1 over the physical possession of the **Property** provided that all statutory and contractual notices have been correctly served by the **Insured**; or
  - 3.8.2 over the terms of a tenancy agreement between the **Insured** and a **Contracting Party** relating to the use or maintenance of the **Property**; or
  - 3.8.3 the actual or alleged negligence, damage (including trespass) or nuisance to the **Property** other than with a tenant.

### Exclusions - What is not Covered

- 3.9 **Keystone** shall not be liable to pay the **Insured** in respect of any **Claim** arising out of or in connection with:
- 3.9.1 the payment or non-payment or review of any tax, rent, mesne profit or service charge; or
  - 3.9.2 a dispute or legal proceedings relating to planning or building regulations or decisions or compulsory purchase orders or any actual, planned or proposed works by or under the order of any Government or public or Local Authority; or
  - 3.9.3 any dispute or legal proceedings arising from the negotiation, review or renewal of a tenancy agreement or the subsequent purchase of the **Property** whether or not this purchase is completed; or

- 3.9.4 any dispute or legal proceedings where the **Insured** have failed to maintain in full force and effect buildings insurance covering the standard range of perils during the tenancy agreement if the **Insured** were contractually obligated to have this insurance in force; or
- 3.9.5 a dispute or legal proceedings over subsidence or heave regardless of how caused; or
- 3.9.6 a contract dispute or legal proceedings other than where the contract is a tenancy agreement with a **Contracting Party**.

## Section E – Data Protection

### Inclusions - What is Covered

- 3.10 **Keystone** agree to pay the **Insured** for **Legal Expenses** incurred in defending any dispute or legal proceedings brought against the **Insured** under the Privacy Act 1988.

## Section F – Statutory Licence

### Inclusions - What is Covered

- 3.11 **Keystone** agree to pay the **Insured** for **Legal Expenses** incurred in an appeal by the **Insured** against the suspension, revocation, imposed alteration of or refusal to renew a **Statutory Licence**.

### Exclusions - What is not Covered

- 3.12 **Keystone** shall not be liable to pay the **Insured** for **Legal Expenses** incurred in respect of any **Claim** arising out of or in connection with:
  - 3.12.1 suspension, revocation, alteration or refusal to renew a **Statutory Licence** which is imposed by an **Act of Parliament** or national or local government regulation or order; or
  - 3.12.2 any costs incurred to comply with a notice or order; or
  - 3.12.3 driving licences.

## Section G – Employee’s Breach of Restrictive Covenants

### Inclusions - What is Covered

- 3.13 **Keystone** agree to pay the **Insured** for **Legal Expenses** incurred in pursuing legal proceedings against an **Employee** or previous **Employee** to obtain the remedy of an injunction against that **Employee** or previous **Employee** for their breach of an express restrictive covenant in their employment contract where the breach by the **Employee** or previous **Employee** relates to or arises from:
  - 3.13.1 soliciting the **Insured’s Employees**, or
  - 3.13.2 soliciting the **Insured’s** customers.

### Exclusions - What is not Covered

- 3.14 **Keystone** shall not be liable to pay the **Insured** for **Legal Expenses** incurred in respect of any **Claims** arising out of or in connection with individuals who before the inception of this **Policy** either ceased to be **Employees** or were working out their notice period (including where the **Employee** was on a period of gardening leave).

## Section H – ATO Tax Investigation Protection

### Inclusions - What is Covered

- 3.15 **Keystone** agree to pay the **Insured** for **Legal Expenses** incurred in respect of the **Insured’s** representation arising directly from:
  - 3.15.1 an **ATO Investigation** in respect of a notification from the **ATO** that it is taking action, carrying out an investigation or making an inquiry under the provisions of **Income Tax Legislation**;
  - 3.15.2 a **GST Dispute** with the **ATO** in respect of a claim by the **ATO** for additional amounts of GST. For the purpose of this clause, the claim is first made against the **Insured** on the earliest of the following:
    - 3.15.2.1 the date on which the **ATO** requests a meeting with the **Insured** or enters the **Insured’s** premises or expresses dissatisfaction with any of the **Insured’s** GST returns in writing; or

- 3.15.2.2 the date on which the **Insured** or the **Insured's** tax adviser first became aware, or could reasonably have become aware, that a **GST Dispute** was likely to arise with the **ATO**; or
- 3.15.2.3 the date on which the **Insured** are served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST;
- 3.15.3 a **Fringe Benefits Dispute** in respect of a claim by the **ATO** for additional amounts of tax within the meaning of **Income Tax Legislation**. For the purpose of this clause, the claim is first made against the **Insured** on the earliest of:
  - 3.15.3.1 the date on which the **ATO** expresses dissatisfaction with the amounts of PAYG or FBT (as defined in **Income Tax Legislation**) paid by the **Insured** or the **Insured's** returns relating to PAYG or FBT; or
  - 3.15.3.2 the date on which the **ATO** starts an investigation into the accuracy of PAYG or FBT returns or information or into the **Insured's** liability or that of an **Employee** to pay additional tax because of alleged inaccuracies in such returns or information.
- 3.16 Provided that:
  - 3.16.1 there is a reasonable prospect of reducing the liabilities alleged by **ATO**; and
  - 3.16.2 the **Insured** have maintained and continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the **ATO** where applicable and have made all returns and payments except those which are disputed and provided information to relevant authorities in due time; and
  - 3.16.3 the **Insured** and the **Appointed Representative** must provide information to the **ATO** in due time and must comply with any statutory notice requesting information which is not the subject of an appeal; and
  - 3.16.4 the **Insured** or the **Appointed Representative** immediately notify **Keystone** in writing of any invitation by the **ATO** to make an offer in settlement; and
  - 3.16.5 in respect of an **ATO Investigation** the **Appointed Representative** provide **Keystone** with copies of relevant correspondence between the **ATO**, the **Appointed Representative** and the **Insured** (including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

#### Exclusions - What is not Covered

- 3.17 **Keystone** shall not be liable to pay the **Insured** for **Legal Expenses** incurred in respect of any **Claim** arising out of or in connection with:
  - 3.17.1 costs incurred in dealing with routine matters which do not fall within a **Claim** by the **ATO** in respect of a **GST Dispute**, **Fringe Benefits Dispute** or **ATO Investigation** (including but not limited to a BAS audit / Superannuation Fund audit / payroll tax audit visit);
  - 3.17.2 in respect of an **ATO Investigation** only:
    - 3.17.2.1 costs arising after the issue of a notice under **Income Tax Legislation** notifying the **Insured** that the investigation has been completed; and/or
    - 3.17.2.2 costs arising directly from an amendment under **Income Tax Legislation**; and/or
    - 3.17.2.3 costs incurred otherwise than wholly in connection with an **ATO Investigation** into the **Insured** business income or profits;
  - 3.17.3 any **Claim** where:
    - 3.17.3.1 deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive; and/or
    - 3.17.3.2 the **Insured** have failed to notify the **Insured's** business status to the relevant authorities within a statutory period; and/or
    - 3.17.3.3 there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements; and/or
    - 3.17.3.4 a false representation has been made either knowingly or without belief in its truth and this has resulted in a mis-statement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made;
  - 3.17.4 any **Claim** arising from or relating to:
    - 3.17.4.1 an investigation or inquiry by the Prosecutions Division of the **ATO** or following the transfer of an inquiry to that Division; and/or

- 3.17.4.2 avoidance schemes relating to tax or superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (Commonwealth of Australia); and/or
- 3.17.4.3 GST refunds in countries outside Australia or Import GST.

## 4. General Extensions

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### Continuous Cover

- 4.1 **Keystone** will indemnify the **Insured** under the Sections of Cover for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from circumstances of which the **Insured** were aware prior to the **Period of Insurance** notwithstanding General Exclusion 5.4, provided that:
  - 4.1.1 **Keystone** was the **Insured's** legal expenses insurer at the time that the **Insured** first became aware of the circumstance and **Keystone** have continued to be the **Insured's** legal expenses insurer; and
  - 4.1.2 the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**; and
  - 4.1.3 **Keystone** will reduce its liability to the extent of any prejudice suffered because of the **Insured's** failure to notify such facts prior to the commencement of the **Period of Insurance**; and
  - 4.1.4 the **Limit of Liability** under this General Extension shall be the lesser available under the terms of the policy in force at the time that the **Insured** first became aware of the circumstance and this **Policy**. The terms of this **Policy** will otherwise apply.

## 5. General Exclusions

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**Keystone** shall not be liable to pay the **Insured** for **Legal Expenses** incurred in respect of:

- 5.1 the **Insured's** defence in civil legal proceedings arising from:
  - 5.1.1 injury or disease including psychiatric injury and stress; or
  - 5.1.2 loss, destruction or damage of or to property; or
  - 5.1.3 alleged breach of any professional duty; or
  - 5.1.4 any non-contractual wrongful act or infringement of a right (other than as specified in **Section B Property Disputes** if the **Insured** are covered under that Section of Cover as specified in the **Schedule**); or
- 5.2 any dispute or legal proceedings or **ATO Investigation** brought, made or commenced outside the **Territorial Limits**; or
- 5.3 **Legal Expenses** incurred without **Keystone's** prior written consent or for a sum in excess of **Keystone's** consent; or
- 5.4 any **Claim** or possible **Claim** relating to or arising from any cause, event or circumstance occurring prior to or existing at inception of this **Policy** and which has or which the **Insured** knew or ought reasonably to have known may give rise to a dispute or legal proceedings or **ATO Investigation** by or against the **Insured**; or
- 5.5 fines or other penalties imposed by a Court or tribunal; or
- 5.6 any dispute or legal proceedings or **ATO Investigation** in respect of which the **Insured** are, or but for the existence of this **Policy** would be, entitled to any payment under any insurance policy whether a legal expenses insurance or not or under a legal aid certificate or representation order; or
- 5.7 any **Claim** arising from the **Insured's** intentional wrongdoing or an act or omission with negligent disregard as to its consequences; or
- 5.8 any dispute or legal proceedings with Government or Local Authority departments concerning the imposition of statutory charges; or

- 5.9 disputes or legal proceedings between the **Insured** as specified in the **Schedule** or any **Endorsement**, or with any parent company or subsidiary company or associated company or partner; or
- 5.10 any dispute or legal proceedings between the **Insured** and **Keystone**, or the **Insured** and the **Appointed Representative**, or the **Insured** and the **Insured's** insurance intermediary; or
- 5.11 any dispute or legal proceedings arising out of breach or alleged breach of confidentiality or passing off whether related to intellectual property or not; or
- 5.12 any dispute or legal proceedings arising out of the ownership or existence of any intellectual property rights; or
- 5.13 any dispute or legal proceedings arising out of or in connection with actual or alleged defamation or malicious falsehood; or
- 5.14 any **Legal Expenses** incurred in respect of or in connection with a judicial review; or
- 5.15 appeals arising out of legal proceedings or **ATO Investigation** to which **Keystone's** prior written consent has not been granted or withdrawn; or
- 5.16 any claim, legal liability or any loss or damage to property or **Property** directly or indirectly caused by or contributed to by seepage, pollution or contamination of any kind; or
- 5.17 any **Legal Expenses** which the **Insured** should or would have had to incur irrespective of any dispute or legal proceedings; or
- 5.18 any expense, legal liability or any loss or damage to **Property** directly or indirectly caused by or contributed to by:
  - 5.18.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - 5.18.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- 5.19 any loss, damage, cost or expense directly or indirectly caused by, resulting from or in connection with (including any action taken in controlling, preventing, suppressing or in any way relating to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss):
  - 5.19.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - 5.19.2 any act including but not limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
- 5.20 any **Claim** that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.
- 5.21 any **Claim** arising from any event or occurrence prior to the **Retroactive Date**.

## 6. General Conditions

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These are the conditions of the insurance coverage under this **Policy** that the **Insured** needs to meet as part of this contract. If the **Insured** do not meet these conditions, **Keystone** may need to reject the **Insured's Claim**, or a **Claim** payment could be reduced. In some circumstances, the **Insured's Policy** may not be valid.

### Alteration of Risk

- 6.1 The **Insured** must notify **Keystone** as soon as practicable in writing of any change in circumstances that might affect **Keystone's** decision to provide the **Insured** with this **Policy** or

the **Premium** charged. Examples include changes to the **Insured's Professional Services** or the acquisition of or by another company.

### Appeal Procedure

- 6.2 If, following legal proceedings to which **Keystone** have given **Keystone's** prior written consent, the **Insured** wishes to appeal against the judgment or decision of a Court or tribunal, the grounds for this appeal must be submitted to **Keystone** through the **Appointed Representative** as soon as practicable so that **Keystone** may consider whether to consent to this further action.
- 6.3 If an appeal is lodged against a judgment or decision of a Court or tribunal made in the **Insured's** favour following legal proceedings to which **Keystone** have given **Keystone's** prior written consent, the **Insured** must notify **Keystone** as soon as practicable in order that cover may continue. **Keystone** will inform the **Appointed Representative** of **Keystone's** decision. The **Insured** must co-operate in an appeal against the judgment or decision of a Court or tribunal if **Keystone** so require it.

### Arbitration

- 6.4 Any dispute between the **Insured** and **Keystone** shall be referred to a single Arbitrator who shall be a lawyer agreed upon by both the **Insured** and **Keystone** or upon failing agreement, a lawyer who is nominated by the President of the Law Society of the state in which the **Insured** is registered. The apportionment of the costs of the arbitration between the **Insured** and **Keystone** shall be determined by the Arbitrator.

### Assignment

- 6.5 This **Policy** cannot be assigned by the **Insured**.

### Authorisation

- 6.6 The **Principal Insured** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Insured** for all purposes under this **Policy**.

### Cancellation

- 6.7 **Keystone** may only cancel this **Policy** pursuant to the *Insurance Contracts Act 1984 (Cth)*.
- 6.8 The **Principal Insured** may cancel this **Policy** at any time by giving written notice to **Keystone**.
- 6.9 **Keystone** may retain the pro rata proportion of the **Premium**. However, in the event of the notification of a **Claim** which is covered under this **Policy**, or a notification pursuant to the *Insurance Contracts Act 1984 (Cth)* being given by an **Insured** prior to cancellation, the **Premium** shall be regarded as fully earned and may be retained by **Keystone**.

### Consideration

- 6.10 The cover provided by **Keystone** under this **Policy** is in consideration of the payment of the **Premium**.
- 6.11 The **Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Keystone** by the due date. The due date is on or before thirty (30) days after the inception date of the **Period of Insurance** or such other time that **Keystone** agrees in writing. **Keystone** is entitled to cancel this **Policy** in accordance with the *Insurance Contracts Act 1984 (Cth)* if the **Insured** fails to pay the **Premium** by the due date.

### Construction and Interpretation

- 6.12 Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.
- 6.13 Words denoting the singular include the plural and vice versa except where the context otherwise requires.

### Deregistration

- 6.14 The **Insured** must notify **Keystone** immediately if the **Insured's** statutory registration, licence, certification or authorisation under any relevant legislation or industry code of practice governing the **Insured's** profession is cancelled, suspended or terminated, or has conditions imposed



during the **Period of Insurance**. However, this Condition does not apply if the suspension relates purely to the late payment of registration fees.

#### Duty to Mitigate

- 6.15 The **Insured** must take all reasonable precautions to avoid, prevent and mitigate **Claims**, disputes or legal proceedings.
- 6.16 The **Insured** must use every endeavour and take all reasonable measures to minimise the cost and effect of any **Claim**.

#### Endorsements

- 6.17 An **Endorsement** does not affect or increase the **Limit of Liability** or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each **Endorsement** is otherwise subject to all the terms of this **Policy**.

#### Enforceability

- 6.18 This **Policy** must have a **Schedule** attached to it which has been signed by an authorised officer of **Keystone** to be enforceable.

#### Excess

- 6.19 The **Insured** is liable to pay the **Excess** for each **Claim** specified in the **Schedule**.
- 6.20 The **Excess** is net of any input tax credit which the **Insured** is or may be entitled to receive or claim under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* when calculating the **Excess** which is payable by the **Insured** for the acquisition of goods, services or other supplies.
- 6.21 The **Insured** shall, if directed by **Keystone**, pay to **Keystone** (or as directed by **Keystone**), the **Excess** within seven (7) working days in the event of a **Claim** by the **Insured** under this **Policy**. Any delay, failure or refusal by the **Insured** to pay the **Excess** will entitle **Keystone** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order or any other payment to be made by **Keystone** under this **Policy**. If a failure or refusal to grant access to monies for any **Excess** results in a failure of a settlement, **Keystone's** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled incurred with **Keystone's** written consent up to the date of such failure or refusal, less the **Excess**.
- 6.22 The **Insured** shall, within seven (7) working days of receipt of **Keystone's** written request, reimburse **Keystone** for a payment where **Keystone** have elected to pay all or part of the **Excess** in respect of any **Claim**.

#### Exercise of Reasonable Care

- 6.23 The **Insured** must exercise reasonable care to prevent injury, loss or damage to the **Insured** or others and comply with all the terms and conditions of this **Policy**.

#### Goods and Services Tax (GST)

- 6.24 **Keystone** will charge the **Insured** an amount on account of GST as part of the **Premium**. The **Insured** must inform **Keystone** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform **Keystone** of its entitlement or correct entitlement to an input tax credit. **Keystone's** liability to the **Insured** will be calculated taking into account any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition despite the other terms of this **Policy**. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*.

#### Governing Law

- 6.25 This **Policy** will be governed in accordance with the law of the State or Territory of Australia in which this **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

### Instruction and Choice of Appointed Representative and Counsel

- 6.26** Keystone will choose an **Appointed Representative** to act on the **Insured's** behalf in any **Claim**.
- 6.27** In all cases the **Appointed Representative** shall be appointed in the name of and on behalf of the **Insured**. If in the course of any **Claim** the **Appointed Representative** wishes to instruct Counsel or an expert, Counsel's or the expert's name and an explanation of the necessity for this instruction must be submitted to **Keystone** for **Keystone's** prior written consent to the proposed instruction which will not be unreasonably withheld.

### Insured's Insolvency or Liquidation

- 6.28** If the **Insured** becomes insolvent or are placed in liquidation, receivership, administration or bankruptcy or enter into a voluntary arrangement or deed of arrangement or if any application is made to the Court or meeting convened for any these purposes **Keystone** have the right to cease to provide insurance coverage under this **Policy** for **Legal Expenses** despite any previous consent **Keystone** may have granted.

### Limit of Liability

- 6.29** **Keystone's** maximum aggregate liability under this **Policy** for all **Claims** and/or claims under any Extension or **Endorsement** during the **Period of Insurance** will not exceed the **Limit of Liability**.
- 6.30** A sub-limit shall form part of and erode the **Limit of Liability** where that sub-limit is specified in the **Schedule**, or this **Policy**.
- 6.31** **Keystone** are not obliged to defend, or continue to defend, any **Claim** after the **Limit of Liability** has been eroded.

### Material Change

- 6.32** The **Insured** must notify **Keystone** as soon as reasonably practicable of any material change in the risk insured by this **Policy**. **Keystone** is entitled to amend the terms of this **Policy** and/or charge an additional premium based on **Keystone's** assessment of any change in the risk insured by this **Policy**. A material change in the risk includes, without limitation:
- 6.32.1** activities that are materially different from those declared in the **Proposal**; or
  - 6.32.2** activities outside the normal activities of the **Professional Services**; or
  - 6.32.3** the **Insured** being insolvent; or
  - 6.32.4** any loss of or conditions imposed upon any licence or other authority required by the **Insured** to conduct the **Professional Services**.
- 6.33** **Keystone** may at its election, instead of cancelling or avoiding this **Policy**, give notice in writing to the **Insured** that any **Claim** which has arisen or may arise which is related to such facts, activities or circumstances shall be excluded from indemnity under this **Policy** in the event of **Keystone** being at any time entitled to cancel or avoid this **Policy** because of the **Insured** failing to give notice in accordance with Condition *6.32 Material Change*.

### Other Insurance

- 6.34** The **Insured** shall promptly give to **Keystone** full details of any other insurance, including the identity of the insurer and the policy number, and such further information as **Keystone** may reasonably require if at the time any **Claim** arises under this **Policy** there is any other insurance in force covering the same liability.

### Payment of Legal Expenses

- 6.35** All invoices and requests for payment for **Legal Expenses** which the **Insured** receives from the **Appointed Representative** should be forwarded to **Keystone** as soon as practicable upon receipt. The **Insured** must ask the **Appointed Representative** to submit to **Keystone** the bill of costs for assessment or certification by the appropriate Law Society, Court or tribunal if **Keystone** so require. The **Insured** are responsible for payment of all **Legal Expenses**. **Keystone** may settle these requests for payment of **Legal Expenses** directly at **Keystone's** discretion if requested by the **Insured** to do so. The payment of some **Legal Expenses** by **Keystone** is not an indication that all **Legal Expenses** will be paid.

### Proportionate Liability

6.36 This **Policy** will only indemnify the **Insured** for the **Insured's** proportionate liability for any **Claim**.

### Recovery of Costs

6.37 Costs are to be repaid to **Keystone** whenever the **Insured** are awarded costs or under the terms of any settlement where costs are included.

6.38 The **Insured** and the **Insured's Appointed Representative** must make every effort to make a full recovery of costs. The **Insured** agrees that a fair and reasonable proportion of settlement will be deemed costs and due to **Keystone** where a settlement purports to be a global or a without costs settlement, or where costs are awarded but not recovered. All costs to **Keystone** shall be paid first where this settlement is paid in instalments.

### Rights of Third Parties

6.39 Nothing in this **Policy** is intended to give any third party any right to enforce any term of this **Policy** unless specifically agreed by **Keystone** in writing otherwise.

### Subrogation

6.40 **Keystone** will become subrogated to all rights and remedies that the **Insured** may have against any party in relation to a **Claim** where **Keystone** have paid that **Claim** under this **Policy**. The **Insured** must assist **Keystone** (including giving evidence at any civil hearing) and provide such information and documentation (including signed statements) as **Keystone** reasonably require in exercising such rights at **Keystone's** request, and without charge.

6.41 **Keystone** agree not to exercise the **Insured's** rights of subrogation against any **Principal** or **Employee** of the **Insured's**, if any payment is made or may be made under this **Policy**, unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **Principal** or **Employee**.

### Variation of this Policy

6.42 No variation of this **Policy** will be effective, unless made by **Endorsement**.