



BusinessGuard Umbrella Liability

POLICY WORDING

Policy Wording

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BusinessGuard™ Umbrella

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations and any other person or organisation qualifying as a **Named Insured** under this policy. The words "we," "us" and "our" refer to Chartis Australia Insurance Limited.

The word **Insured** means any person or organisation qualifying as such under Section V. Definitions.

Other words and phrases that appear in bold print have special meaning. See Section V. Definitions.


In consideration of the payment of the premium and in reliance upon the statements in the Declarations, we agree to provide coverage as follows:

I. Insuring Agreement - Coverage A: Excess Follow Form Insurance

- 1) We will pay on behalf of the **Insured** those sums in excess of the total applicable limits of **Scheduled Underlying Insurance** that the **Insured** becomes legally obligated to pay as compensation, provided the compensation would be covered by **Scheduled Underlying Insurance**, except for exhaustion of the total applicable limits of **Scheduled Underlying Insurance** by the payment of **Loss**.
- 2) Coverage A shall follow the terms, definitions, conditions and exclusions of **Scheduled Underlying Insurance**, subject to the **Policy Period**, Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. If any provisions of **Scheduled Underlying Insurance** conflict with any provisions of this policy, the provisions of this policy will apply.
- 3) Coverage A of this policy will not, in any event, provide broader coverage than that provided by **Scheduled Underlying Insurance**.
- 4) If we are prevented, or not legally permitted to pay compensation on behalf of the **Insured** due to the laws or statutes of any territory, then we will indemnify the **Insured** for those sums in excess of the total applicable limits of **Scheduled Underlying Insurance**.
- 5) The amount we will pay for compensation is limited as described in Section IV. Limits of Insurance.
- 6) Under no circumstances shall this policy drop down in the case of insolvency of an underlying insurer.

II. Insuring Agreement - Coverage B: Umbrella Liability Insurance

- 1) We will pay on behalf of the **Insured** those sums in excess of the **Self-insured Retention** that the **Insured** becomes legally obligated to pay as compensation by reason of liability imposed by law or assumed by the **Insured** under an **Insured Contract** because of **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** not covered by **Scheduled Underlying Insurance**, provided that:
 - a) the **Bodily Injury or Property Damage** is caused by an **Occurrence** happening anywhere, and the **Bodily Injury or Property Damage** occurs during the **Policy Period**; and
 - b) the **Personal Injury or Advertising Injury** is caused by an **Occurrence** happening anywhere, and the **Occurrence** takes place during the **Policy Period**.
- 2) Coverage B will not apply to compensation that would have been covered by **Scheduled Underlying Insurance** even if the total applicable limits of **Scheduled Underlying Insurance** have been exhausted by the payment of **Loss**.

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- 3) If we are prevented, or not legally permitted to pay compensation on behalf of the **Insured** due to the laws or statutes of any territory, then we will indemnify the **Insured** for those sums in excess of the **Self-insured Retention**.
 - 4) The amount we will pay for compensation is limited as described in Section IV. Limits of Insurance.

III. Defence Provisions

- 1) We shall have the right to defend any **Suit** against the **Insured** that seeks compensation covered by this policy:
 - a) under Coverage A, when the total applicable limits of **Scheduled Underlying Insurance** have been exhausted by payment of **Loss**; and
 - b) under Coverage B, when the compensation sought because of **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** would not be covered by **Scheduled Underlying Insurance**.

We shall have the right to defend any **Suit** against the **Insured** that seeks compensation covered by this policy, even if the **Suit** is groundless, false or fraudulent.

If we are prevented by law or statute from assuming the obligations specified under this provision, or we elect not to take over conduct under clauses (a) or (b) above, we will pay any expenses incurred with our consent in writing.

- 2) When we assume the defence of any **Suit** against the **Insured** that seeks compensation covered by this policy, we will:
 - a) investigate, negotiate and settle the **Suit** as we deem expedient; and
 - b) pay the following supplementary payments to the extent that such payments are not covered by **Scheduled Underlying Insurance**:
 - i) premiums on bonds to release attachments for amounts not exceeding the applicable Limits of Insurance of this policy, but we are not obligated to apply for or furnish any such bond; and
 - ii) premiums on appeal bonds required by law to appeal the **Suit**, but we are not obligated to apply for or furnish any such bond; and
 - iii) all costs taxed against the **Insured** in the **Suit**; and
 - iv) pre-judgment interest awarded against the **Insured** on that part of the judgment we pay; and
 - v) post-judgment interest that accrues after entry of judgment and before we have paid, offered to pay or deposited in court that part of the judgment that is within the applicable Limits of Insurance of this policy; and
 - vi) the **Insured's** expenses incurred at our request or with our consent (including actual loss of wages or salary, but not loss of other income).
- 3) Where we are not entitled to or do not elect to defend any **Suit**, we will, however, have the right but not the duty to participate in the defence of any **Suit** and the investigation of any claim to which this policy may apply. If we exercise this right, we will do so at our own expense.
- 4) We will not defend any **Suit** or investigate any claim after the exhaustion of the applicable Limits of Insurance of this policy by the payment of **Loss**.

IV. Limits Of Insurance

- 1) With respect to Coverages A and B, the Limits of Insurance shown in Item 3 of the Declarations and the rules below state the most we will pay regardless of the number of:
 - a) **Insureds**; or
 - b) claims made or **Suits** brought against any or all **Insureds**; or
 - c) persons or organisations making claims or bringing **Suits**; or
 - d) coverages provided under this policy.
- 2) The Products-Completed Operations Aggregate Limit stated in Item 3 of the Declarations is the most we will pay for all compensation included in the **Products-Completed Operations Hazard** for Coverage A and Coverage B combined.
- 3) Subject to Paragraph 2 above, the Each Occurrence Limit stated in Item 3 of the Declarations is the most we will pay for the sum of all compensation under Coverage A and Coverage B combined arising out of any one **Occurrence**.
- 4) Coverage A applies only in excess of the total applicable limits of **Scheduled Underlying Insurance**. If, however, a policy shown in the **Schedule of Underlying Insurance** forming a part of this policy has a limit of insurance:
 - a) greater than the amount shown in such schedule, this policy will apply in excess of the greater amount; or
 - b) less than the amount shown in such schedule, this policy will apply in excess of the amount shown in the **Schedule of Underlying Insurance** forming a part of this policy.
- 5) Under Coverage A, if the total applicable limits of **Scheduled Underlying Insurance** are reduced or exhausted by the payment of **Loss**, we will:
 - a) in the event of reduction, pay excess of the remaining total applicable limits of **Scheduled Underlying Insurance**; and
 - b) in the event of exhaustion, continue in force as underlying insurance.
- 6) The limits of insurance shown under Items 6.1 or 6.2 of the Declarations is the most we will pay for the sum of all compensation under each coverage as outlined in the endorsements attached to this policy. Notwithstanding the limits of insurance applicable to Coverage A, Coverage B or item 6.2 combined as shown in the Declarations, the most we will pay for the sum of all compensation arising out of any one **Occurrence** will be the highest applicable limit of insurance as stated in the declarations.
- 7) Expenses incurred to defend any **Suit** or to investigate any claim will be in addition to the applicable Limits of Insurance of this policy, unless otherwise provided by **Scheduled Underlying Insurance**. Provided, however, that in the event of any claim being made against the **Insured** in any court or before any other legally constituted body in the United States of America and/or Canada, or any other territory coming within the jurisdiction of courts of the United States of America and/or Canada, the Limits of Insurance shall apply to such claim inclusive of all expenses.
- 8) The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, beginning with the inception date of the **Policy Period** shown in the Declarations, unless the **Policy Period** is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance of this policy.

V. Definitions

- 1) **Advertisement** under Coverage B means a paid broadcast, publication or telecast to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.
- 2) **Advertising Injury** under Coverage B means injury, other than **Bodily Injury or Personal Injury**, arising solely out of your **Advertisement** as a result of one or more of the following offenses:
 - a) slander or libel of a person or organisation, or disparagement of a person's or organisation's goods, products or services in your **Advertisement**; or
 - b) violation of a person's right of privacy in your **Advertisement**; or
 - c) misappropriation of another's advertising idea in your **Advertisement**; or
 - d) infringement upon another's copyright, trademark or slogan in your **Advertisement**.
- 3) **Bodily Injury** under Coverage B, and under any exclusion in this policy applicable to Coverage A means bodily injury, sickness, disability or disease, including death resulting from any of these at any time. **Bodily Injury** shall also mean mental injury, mental anguish, shock or death if directly resulting from bodily injury, sickness, disability or disease.
- 4) **Impaired Property** under Coverage B means tangible property, other than **Your Product** or **Your Work**, that cannot be used or is less useful because:
 - a) it incorporates **Your Product** or **Your Work** that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b) you have failed to fulfill the terms of a contract or agreement,if such property can be restored to use by:
 - (a) the repair, replacement, adjustment or removal of **Your Product** or **Your Work**, or
 - (b) your fulfilling the terms of the contract or agreement.
- 5) **Insured** under Coverage A means:
 - a) the **Named Insured**; and
 - b) any person or organisation that is an insured under **Scheduled Underlying Insurance**.
- 6) **Insured** under Coverage B means:
 - a) the **Named Insured**; and
 - b) if you are an individual, your spouse, but only with respect to the conduct of a business of which you are the sole owner; and
 - c) your partners, joint venture members, executive officers, employees, directors, stockholders or volunteers while acting within the scope of their duties as such; and
 - d) any person or organisation while acting as your real estate manager; and
 - e) your legal representative if you die, but only with respect to duties as such; and
 - f) any person or organisation to whom you are obligated by a written **Insured Contract** to provide insurance such as is afforded by this policy, but only with respect to their liability arising out of

operations conducted by you or on your behalf and not to any greater extent than required by the contract or agreement; and

- g) any office bearer or member of social and/or sporting clubs formed with the consent of the **Named Insured** in respect of claims arising from duties connected with activities of any such club.

Notwithstanding any of the above, no person or organisation is an **Insured** with respect to the conduct of any current, past or newly formed partnership or joint venture that is not designated in Item 1 of the Declarations as a **Named Insured**.

- 7) **Insured Contract** under Coverage B means that part of any contract or agreement pertaining to your business under which any **Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** to a third person or organisation. However, the **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** must arise out of an **Occurrence** that takes place subsequent to the execution of the **Insured Contract**. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Solely for the purposes of liability assumed under an **Insured Contract**, reasonable solicitor's fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be compensation because of **Bodily Injury, Property Damage, Personal Injury or Advertising Injury**, provided:

- a) liability to such party for that party's reasonable solicitors fees and necessary litigation expenses has also been assumed in the same **Insured Contract**; and
- b) such reasonable solicitors fees and necessary litigation expenses are for defence of that party against a **Suit** seeking compensation covered by this policy.
- 8) **Loss** under Coverages A and B means those sums actually paid as judgments and settlements and, under Coverage A if provided by **Scheduled Underlying Insurance**, expenses incurred to defend any **Suit** or to investigate any claim.
- 9) **Medical Persons** means medical doctor, medical nurses, dentists and first aid attendants.
- 10) **Motor Vehicle** under Coverage B and under any exclusion in this policy applicable to Coverage A means a land motor vehicle, trailer, semi-trailer or any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.
- 11) **Named Insured** means:
- a) any person or organisation designated in Item 1 of the Declarations; and
- b) any organisation in which you maintain an interest of more than fifty percent (50%) as of the effective date of this policy and to which more specific insurance does not apply; and
- c) any organisation, except for a partnership or a joint venture, that you acquire or form during the **Policy Period** in which you maintain an interest of more than fifty percent (50%) and to which more specific insurance does not apply, provided that:
- i) this policy does not apply to any **Bodily Injury or Property Damage** that occurred or any **Personal Injury or Advertising Injury** that was caused by an **Occurrence** that was committed before you acquired or formed such organisation; and
- ii) you give us prompt notice after you acquire or form such organisation.

A partnership or a joint venture that you acquire or form during the **Policy Period** may be added as an **Insured** only by a written endorsement that we make a part of this policy.

We may, at our option, make an additional premium charge for any organisation that you acquire or form during the **Policy Period**.

- d) any person or organisation that is a **Named Insured** or the equivalent thereof in **Scheduled Underlying Insurance**.
- 12) **Occurrence** under Coverage A means the definition given to that term or the equivalent thereof in **Scheduled Underlying Insurance**.
- 13) **Occurrence** under Coverage B means:
- a) as respects **Bodily Injury** or **Property Damage**, an event, including continuous or repeated exposure to substantially the same general harmful conditions. All such exposure to substantially the same general harmful conditions shall be deemed to arise out of one **Occurrence**.
 - b) as respects **Personal Injury** or **Advertising Injury**, an offence arising out of your business that causes **Personal Injury** or **Advertising Injury**. All compensation that arise from the same or related injurious material or act shall be deemed to arise out of one **Occurrence**, regardless of the frequency or repetition thereof, the number and kind of media used and the number of claimants.

For the purposes of this policy with respect to any latent **Bodily Injury**, or latent **Property Damage**, or any other **Bodily Injury** or **Property Damage** that arises as a result of exposure to a substance or a set of conditions over a period of time, the **Occurrence** shall be deemed to be the exposure to the substance or conditions during the **Policy Period** that gives rise to the **Bodily Injury** or **Property Damage**. Under no circumstances shall the **Occurrence** be deemed to be any latency period or the manifestation of the **Bodily Injury** or **Property Damage**.

- 14) **Personal Injury** under Coverage B means injury arising out of your business, other than **Bodily Injury** or **Advertising Injury**, caused by one or more of the following offences:
- a) false arrest, detention or imprisonment; or
 - b) malicious prosecution; or
 - c) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor; or
 - d) oral, written or electronic publication of material that slanders or libels a person or organisation, or disparages a person's or organisation's goods, products or services; or
 - e) oral, written or electronic publication of material that violates a person's right of privacy; or
 - f) discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
 - i) not done intentionally by or at the direction of any **Insured**; and
 - ii) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any **Insured**.
- 15) **Policy Period** under Coverages A and B means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of termination of this policy.
- 16) **Pollutants** under Coverage B and under any exclusion in this policy applicable to Coverage A means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- 17) **Products-Completed Operations Hazard** under Coverage B and under any exclusion in this policy applicable to Coverage A means all **Bodily Injury and Property Damage** occurring away from premises you own or rent and arising out of **Your Product** or **Your Work** except:
- a) products that are still in your physical possession; or
 - b) work that has not yet been completed or abandoned. However, **Your Work** will be deemed completed at the earliest of the following times:
 - i) when all of the work called for in your contract has been completed; or
 - ii) when all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - iii) when that part of the work done at a job site has been put to its intended use by any person or organisation other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Products-Completed Operations Hazard does not include **Bodily Injury** or **Property Damage** arising out of:

- a) the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you and that condition was created by the loading or unloading of that vehicle by any **Insured**; or
 - b) the existence of tools, uninstalled equipment or abandoned or unused materials.
- 18) **Professional Duty** means the duty of care owed by the **Insured** toward any party in respect of any advice or information provided by or any action undertaken by the **Insured**, its servants or agents, which would be commonly provided by but not limited to members of the following professions, but shall not encompass **Products Hazard-Completion Operations Hazard**:
- a) Accountants, Architects, Auditors, Barristers, Estate Agents, Engineers, Insurance Brokers, Insurance Agents or Solicitors.
- 19) **Property Damage** under Coverage B and under any exclusion in this policy applicable to Coverage A means:
- a) physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical injury to or destruction of other tangible property which occurs during the policy period.
- 20) **Scheduled Underlying Insurance** under Coverages A and B means:
- a) the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy; and
 - b) automatically any renewal or replacement of any policy in Paragraph (a) above, provided that such renewal or replacement provides equivalent coverage to and affords limits of insurance equal to or greater than the policy being renewed or replaced.

Scheduled Underlying Insurance does not include a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

- 21) **Self-insured Retention** under Coverage B means the amount applicable to each **Occurrence** for which the **Insured** is responsible that is shown in Item 4 of the Declarations.

- 22) **Suit** under Coverages A and B means a civil proceeding seeking compensation covered by this policy. **Suit** includes:
- a) an arbitration proceeding in which such compensation is claimed and to which the **Insured** must submit or does submit with our consent; or
 - b) any other alternative dispute resolution proceeding in which such compensation is claimed and to which the **Insured** submits with our consent.
- 23) **Your Product** under Coverage B and under any exclusion in this policy applicable to Coverage A means:
- a) anything (after it has ceased to be in the possession or under the control of the **Insured**) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by:
 - i) you; or
 - ii) others trading under your name; or
 - iii) a person or organisation whose business or assets you have acquired; and
 - b) containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Your Product includes:

- a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Your Product**; and
- b) the providing of or failure to provide warnings or instructions.

Your Product does not include vending machines or other property rented to or located for the use of others but not sold.

- 24) **Your Work** under Coverage B and under any exclusion in this policy applicable to Coverage A means:
- a) work or operations performed by you or on your behalf; and
 - b) materials, parts or equipment furnished in connection with such work or operations.

Your Work includes:

- a) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Your Work**; and
- b) the providing of or failure to provide warnings or instructions.

VI. EXCLUSIONS

1) **Asbestos**

Under Coverages A and B, this insurance does not apply to mesothelioma, asbestosis or to any disease, loss of use of property, damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:

- a) inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos; or
- b) the use of asbestos in constructing or manufacturing any good, product or structure; or
- c) the removal of asbestos from any good, product or structure; or
- d) the manufacture, sale, transportation, storage or disposal of asbestos or goods or products containing asbestos; or
- e) the presence of asbestos in any building.

The coverage afforded by this policy does not apply to payment for the investigation or defence of any **Loss**, injury or damage or any cost, fine or penalty or for any expense or claim or **Suit** related to any of the above.

2) **Various Laws**

Under Coverages A and B, this insurance does not apply to any obligation of the **Insured** under the following:

- a) **Personal Injury** to any employee of the **Insured** arising out of or in the course of his employment in the **Insured's** business. But this Exclusion does not apply:
 - i) with respect to liability of others assumed by the **Insured** under written contract; or
 - ii) where coverage is collectible by the **Insured** under any **Scheduled Underlying Insurance** relating to employers liability; or
- b) Any obligation for which the **Insured** may be held liable under any industrial award, agreement, determination or workers' compensation law.

3) **Securities**

Under Coverages A and B, this insurance does not apply to any liability arising out of:

- a) the purchase, sale, offer of sale or solicitation of any security, debt, insurance policy, bank deposit or financial interest or instrument; or
- b) any representations made at any time in relation to the price or value of any security, debt, insurance policy, bank deposit or financial interest or instrument; or
- c) any depreciation or decline in price or value of any security, debt, insurance policy, bank deposit or financial interest or instrument.

4) **Employment Practices**

Under Coverages A and B, this insurance does not apply to any liability arising out of:

- a) failure to hire any prospective employee or any applicant for employment; or
- b) termination of any employee; or
- c) failure to promote or advance any employee; or

- d) employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at a present, past, future or prospective employee.

This exclusion applies:

- a) whether the **Insured** may be liable as an employer or in any other capacity; and
- b) to any obligation to share compensation with or repay someone else who must pay compensation because of the injury.

5) **Care, Custody and Control**

Under Coverages A and B, this insurance does not apply to any damages arising out of:

- a) property owned or occupied by or rented to the **Insured**; or
- b) property used by the **Insured**, or
- c) property in the care, custody or control of the **Insured** or as to which the **Insured** is for any purpose exercising control.

6) **Nuclear Liability**

Under Coverages A and B, this insurance does not apply to any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

7) **Pollution**

Under Coverages A and B, this insurance does not apply to:

- a) **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** directly or indirectly arising out of the:
 - i) actual or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** into or upon any property, land, the atmosphere or any watercourse or body of water (including ground water); or
 - ii) actual or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** caused by any of **Your Products** that have been discarded, dumped, abandoned or thrown away by others; or
 - iii) the cost of removing, nullifying or cleaning up **Pollutants**; or
 - iv) the cost of preventing the escape of **Pollutants**.

Exclusions 7(a)(i), 7(a)(ii), and 7(a)(iii) shall not apply where the claim arises from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place and occurs outside of the United States of America or Canada.

- b) any **Loss**, cost or expense arising out of any governmental direction or request that we, the **Insured** or any other person or organisation test for, monitor, clean up, remove, contain, treat, detoxify, neutralise or assess the effects of **Pollutants**; or
- c) any loss, cost or expense, including but not limited to costs of investigation or solicitors fees, incurred by a governmental unit or any other person or organisation to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**.

8) **Damage to Impaired Property**

Under Coverage B, this insurance does not apply to **Property Damage to Impaired Property** or property that has not been physically injured, arising out of:

- a) a defect, deficiency, inadequacy or dangerous condition in **Your Product** or **Your Work**; or
- b) a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **Your Product** or **Your Work** after it has been put to its intended use.

9) **Damage to Your Product**

Under Coverage B, this insurance does not apply to **Property Damage to Your Product** arising out of it or any part of it.

10) **Product Recall**

Under Coverage B, this insurance does not apply to compensation claimed for any loss, cost or expense incurred by you or others for the **Loss** of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a) **Your Product**; or
- b) **Your Work**; or
- c) **Impaired Property**,

if such product, work or property is withdrawn or recalled from the market or from use by any person or organisation because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

11) **Employee to Employee**

Under Coverage B, this insurance does not apply to liability of any employee with respect to **Bodily Injury** or **Personal Injury** to another employee of the same employer injured in the course of such employment.

12) **Willful Violation, Falsity, Prior Publication, Criminal**

Under Coverage B, this insurance does not apply to **Personal Injury** or **Advertising Injury**:

- a) caused by or at the direction of any **Insured** with the knowledge that the act would violate the rights of another and would inflict **Personal Injury** or **Advertising Injury**; or
- b) arising out of oral, written or electronic publication of material if done by or at the direction of any **Insured** with knowledge of its falsity; or
- c) arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the **Policy Period**; or
- d) arising out of a criminal act committed by or at the direction of any **Insured**.

13) Various Advertising

Under Coverage B, this insurance does not apply to **Advertising Injury**:

- a) arising out of a breach of contract, except an implied contract to use another's advertising idea; or
- b) arising out of the failure of goods, products or services to conform with any statement of quality or performance made; or
- c) arising out of the wrong description of the price of goods, products or services; or
- d) committed by an **Insured** whose business is advertising, broadcasting, publishing or telecasting.

14) Watercraft

Under Coverages A and B, this insurance does not apply to **Bodily Injury** or **Property Damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any watercraft owned by the **Insured** or rented to the **Insured** without a crew.

15) Aviation

Under Coverages A and B, this insurance does not apply to **Bodily Injury, Personal Injury, Advertising Injury** or **Property Damage** caused by or arising directly or indirectly out of or in connection with the:

- a) ownership, maintenance, operation or use of:
 - i) any airport, aerodrome, airstrip, heliport or any other area where aircraft take off or land; or
 - ii) any aircraft hangar or any other area used for storing, sheltering, servicing, maintaining or parking aircraft; or
 - iii) any aircraft including loading or unloading and refueling of any aircraft unless such aircraft are chartered with pilot and crew supplied; or
- b) **Insured's** Products which the **Insured** knew or had reasonable cause to believe would be or are installed in any aircraft; or
- c) repair, maintenance, servicing of or installation in or on any aircraft.

16) War & Terrorism

Under Coverages A and B, this insurance does not apply to liability:

- a) directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, civil commotion, factional civil commotion, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority or
- b) arising directly or indirectly as a result of or in connection with Terrorism including, but not limited to, any contemporaneous or ensuing **Property Damage, Bodily Injury, Personal Injury** or **Advertising Liability** caused by fire, looting or theft.

Terrorism means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the economy.

Terrorism shall also include any act which is verified or recognised by the government of any country in which the **Insured** operates or exports products into, as an act of terrorism.

17) **Expected or Intended**

Under Coverage B, this insurance does not apply to **Bodily Injury** or **Property Damage** expected or intended from the standpoint of the **Insured**. However, this exclusion does not apply to:

- a) **Bodily injury** or **Property Damage** resulting from the use of reasonable force to protect persons or property; or
- b) liability of the **Named Insured** for compensation as the result of an act committed by the **Named Insured's** employee(s) which results in **Bodily Injury** or **Property Damage** expected or intended from the standpoint of the **Named Insured's** employee(s), provided such act was not committed at the direction of the **Named Insured**.

18) **Motor Vehicles**

Under Coverages A and B, this insurance does not apply to **Bodily Injury** or **Property Damage** resulting from the use of any registered **Motor Vehicle** owned by or in the physical legal control of the **Insured** or in respect of which insurance is required by virtue of any legislation relating to **Motor Vehicles**. Provided this exclusion shall not apply where coverage is collectible by the **Insured** under any **Scheduled Underlying Insurance** relating to the use of **Motor Vehicles**.

19) **Professional Indemnity**

Under Coverage B this insurance does not apply to compensation claimed for any **Loss**, cost or expense incurred by you or others resulting from a breach of a **Professional Duty** on the part of the **Insured**, its servants or agents, but this exclusion does not apply to:

- a) **Personal Injury, Bodily Injury** or **Property Damage** arising therefrom; or
- b) The rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

20) **Punitive and Exemplary Damages**

Under Coverages A and B this insurance does not apply to:

- a) punitive or exemplary damages awarded against the **Insured**; or
- b) any fines, penalties and/or liquidated damages.

Exclusion 20 (a) shall not apply to:

- i) Any claim or claims in respect of **Loss** or **Losses** arising from punitive damages or exemplary damages where the **Occurrence** takes place in its entirety in the United States of America and such damages are insurable by the law of the state where the **Suit** is tried, or if no **Suit**, then where the injury or damage is sustained; and
- ii) A limit of indemnity is shown under item 6 (1) in the Declarations.



21) **Silica Exclusion**

Under Coverages A and B this insurance does not apply to any liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form, or to any obligation of the **Insured** to indemnify any party because of **Bodily Injury, Personal Injury or Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibers, silica dust or silica in any form.

VII. Conditions - Applicable To Coverages A And B

1) Appeals

If the **Insured** or the **Insured's** underlying insurers do not appeal a judgment in excess of the total applicable limits of **Scheduled Underlying Insurance**, we may elect to do so. If we appeal, we shall be liable for, in addition to the applicable Limits of Insurance of this policy, all costs, taxes, expenses incurred and interest on judgments incidental to such an appeal.

2) Audit

We may audit and examine your books and records as they relate to this policy at any time during the period of this policy or anytime after the expiration or termination of this policy.

3) Bankruptcy or Insolvency

Your bankruptcy, insolvency or inability to pay or the bankruptcy, insolvency or inability to pay of any of your underlying insurers will not relieve us from the payment of **Loss** covered by this policy. But under no circumstances will such bankruptcy, insolvency or inability to pay require us to drop down, replace or assume any obligation under **Scheduled Underlying Insurance**.

4) Cancellation

The Policy may be cancelled at any time at the request of the **Insured** in which case we will retain premium calculated at the Company's short period rate for the time the Policy has been in force. We may cancel the Policy in accordance with Sections 59 and 60 of the Insurance Contracts Act 1984.

5) Changes

Notice to any agent or knowledge possessed by any agent or any other person will not effect a waiver or change in any part of this policy. This policy can be changed only by a written endorsement that we make to this policy.

6) Duties in the Event of an Occurrence, Claim or Suit

- a) You must see to it that we are notified as soon as practicable of an **Occurrence** that may result in a claim or **Suit** under this policy. To the extent possible, notice should include:
 - i) how, when and where the **Occurrence** took place; and
 - ii) the names and addresses of any injured persons and any witnesses; and
 - iii) the nature and location of any injury or damage arising out of the **Occurrence**.
- b) If a claim is made or **Suit** is brought against any **Insured** which is reasonably likely to involve this policy, you must notify us in writing:
 - i) under Coverage A, as soon as practicable and in accordance with the reporting provisions of **Scheduled Underlying Insurance**; and
 - ii) under Coverage B, as soon as practicable.

Written notice should be mailed or delivered to: CHARTIS Casualty Claims Department, Level 12 , 717 Bourke Street, Docklands VIC 3008 ;

- c) You and any other involved **Insured** must:
 - i) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or **Suit**; and
 - ii) authorise us to obtain records and other information; and
 - iii) co-operate with us in the investigation, settlement or defence of the claim or **Suit**; and
 - iv) assist us, upon our request, in the enforcement of any right against any person or organisation that may be liable to the **Insured** because of injury or damage to which this insurance may also apply.
- d) No **Insureds** will, except at their own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

7) **Headings**

The descriptions in the headings of this policy are solely for convenience and form no part of the terms and conditions of coverage.

8) **Inspection**

We have the right, but are not obligated, to inspect your premises and operations at any time. Our inspections are not safety inspections. They relate only to the insurability of your premises and operations and the premiums to be charged. We may give you reports on the conditions that we find. We may also recommend changes. We do not, however, undertake to perform the duty of any person or organisation to provide for the health or safety of your employees or the public. We do not warrant the health and safety conditions of your premises or operations or represent that your premises or operations comply with laws, regulations, codes or standards.

9) **Knowledge of Occurrence or Claim**

Knowledge of an **Occurrence**, claim or **Suit** by your agent, servant or employee shall not in itself constitute knowledge by you, unless a principal of yours shall have received notice of such **Occurrence**, claim or **Suit** from said agent, servant or employee.

10) **Legal Actions Against Us**

There will be no right of action against us under this insurance unless:

- a) you have complied with all the terms of this policy; and
- b) the amount you owe has been determined with our consent or by actual trial and final judgment.

11) **Maintenance of Scheduled Underlying Insurance**

During the **Policy Period**, you agree:

- a) to keep **Scheduled Underlying Insurance** in full force and effect; and
- b) that the terms, definitions, conditions and exclusions of **Scheduled Underlying Insurance** will not materially change; and
- c) that the total applicable limits of **Scheduled Underlying Insurance** shall not decrease, except for any reduction or exhaustion of aggregate limits by payment of **Loss**; and
- d) that any renewals or replacements of **Scheduled Underlying Insurance** will provide equivalent coverage to and afford limits of insurance equal to or greater than the policy being renewed or replaced.

If you fail to comply with these requirements, we will be liable only to the same extent that we would have, had you fully complied with these requirements.

12) **Premium**

Unless otherwise provided the premium for this policy is a flat premium and is not subject to adjustment except as provided in Condition 4 herein. If this policy is subject to audit adjustment, the premium may be based upon the rating basis as agreed prior to the **Policy Period**. Upon expiration of this policy or its termination during the **Policy Period**, or at the end of each policy year, the earned premium shall be computed as defined herein. If the earned premium is more than the advance premium paid, the **Named Insured** shall pay the excess to the Company. If less, the Company shall return to the **Named Insured** the unearned portion, subject to the annual minimum premium stated in the Declarations for each twelve months of the **Policy Period**.

13) **Separation of Insureds**

Except with respect to the Limits of Insurance of this policy and rights or duties specifically assigned to the first **Named Insured** designated in Item 1 of the Declarations, this insurance applies:

- a) as if each **Named Insured** were the only **Named Insured**; and
- b) separately to each **Insured** against whom claim is made or **Suit** is brought.

14) **Subrogation**

All right of subrogation is waived under this Policy against any organisation or organisations, the majority of whose capital stock is owned or controlled by the **Insured**, or against any organisation, company or individual who owns or controls the majority of the capital stock of this **Insured**, or any organisation, company or individual, to which or to whom protection is afforded under this Policy except if such organisation, company or individual is protected from such loss by any other policy of indemnity or insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy.

15) **Transfer of Your Rights and Duties**

Your rights and duties under this policy may not be transferred without our written consent.

If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. However, notice of cancellation sent to the first **Named Insured** designated in Item 1 of the Declarations and mailed to the address shown in this policy will be sufficient notice to effect cancellation of this policy.

16) **When Compensation is Payable**

We will not make any payment under this policy unless and until:

- a) under Coverage A, the total applicable limits of **Scheduled Underlying Insurance** have been exhausted by the payment of **Loss**; and
- b) under Coverage B, the **Self-insured Retention** has been exhausted by the payment of **Loss**.

When the amount of **Loss** has finally been determined, we will promptly pay on behalf of the **Insured** the amount of such **Loss** within the applicable Limits of Insurance of this policy.

You shall promptly reimburse us for any amount within the **Self-Insured Retention** paid by us on behalf of the **Insured**.

17) **How The Insurance Contracts Act may effect this Policy**

Any terms and conditions of this Policy which are invalid, illegal or unenforceable as a result of the operation of the Insurance Contracts Act 1984 (as amended or modified from time to time or any other legislation enacted in substitution or replacement thereof) shall be ineffective only to the extent of the invalidity, illegality or unenforceability without invalidating the remainder of such term or condition or the remaining terms and conditions of this Policy.

18) **Choice of Law and Forum**

This policy shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the Courts of the said Commonwealth shall have exclusive jurisdiction in any dispute arising hereunder.

Any disputes or differences, which the **Insured** and us agree to resolve through arbitration, shall be resolved in accordance with and subject to the Institute of Arbitrators Australian Rules of the Conduct for Commercial Arbitration subject to the following:

- a) The arbitration proceedings shall take place in Melbourne, Victoria unless otherwise agreed; and
- b) the written decision of any arbitrator(s) shall be provided to and binding upon us and the **Insured**; and
- c) the **Insured** and us shall each bear our own costs of the arbitration and shall jointly and equally share the expenses of the arbitrator(s) and of the arbitration; and
- d) two arbitrators shall be appointed and one each shall be chosen by us and the **Insured**; and
- e) the arbitrators and umpire are relieved from all judicial formality and may abstain from following the strict rules of law. They shall settle any dispute under the policy according to an equitable rather than a strictly legal interpretation of its terms; and
- f) this condition shall survive the termination of the policy.

VIII. Extension – Forming part of Coverage B

Crisis Communications Management Insurance

This policy is extended to provide Crisis Communications Management Insurance pursuant to the terms, definitions, conditions and exclusions set forth below:

- 1) The following insuring agreement applies to this extension:

Crisis Communications Management Insurance

We will reimburse the **Named Insured** for **Crisis Management Loss** arising from a **Crisis Management Event** first commencing during the **Policy Period**, up to the amount of the **Crisis Management Limit of Insurance**.


- 2) There shall be no **Scheduled Underlying Insurance** or **Self-insured Retention** amount applicable to **Crisis Management Loss**. We shall pay such **Crisis Management Loss** from first dollar, subject to the other terms and conditions of this extension.
- 3) A **Crisis Management Event** shall be reported to us as soon as practicable but in no event later than thirty (30) days after the **Named Insured** first incurs a **Crisis Management Loss** for which coverage will be requested under this extension.
- 4) The following definitions shall apply for the purpose of the coverage provided by this extension only.
 - a) **Crisis Management Event** means an **Occurrence** which in the reasonable professional opinion of a **Key Executive** of the **Named Insured**, in the absence of **Crisis Management Services**, has the potential to cause:
 - i) the **Insured** to become liable to pay compensation covered by this policy under Coverage A in excess of the applicable limits of **Scheduled Underlying Insurance** shown in the Schedule of Underlying Insurance forming a part of this policy; or
 - ii) the **Insured** to become liable to pay compensation covered by this policy under Coverage B in excess of the **Self-insured Retention**; and
 - iii) imminent **Financial Loss** to the Company if left unmanaged.

Crisis Management Event shall include, without limitation, man-made disasters such as explosions, major crashes, multiple deaths, burns, dismemberment, traumatic brain injury, paraplegia, or contamination of food, drink or pharmaceuticals.

For the purposes of this endorsement, a **Crisis Management Event** shall first commence when the **Named Insured** or any of its principals shall first become aware of the **Occurrence** and shall conclude at the earliest of the time when the **Crisis Management Company** advises the **Named Insured** that the crisis no longer exists or when the **Crisis Management Limit of Insurance** has been exhausted.

- b) **Crisis Management Company** means any public relations company approved by us that is hired by the **Named Insured** to perform **Crisis Management Services** in connection with a **Crisis Management Event**. Attached to and forming a part of this endorsement is a list of companies that have been pre-approved by us and may be hired by the **Named Insured** without further approval by us. In the event the **Named Insured** chooses to retain the services of an entity not listed on the attached list, the **Named Insured** must obtain our consent, which remains in our sole discretion.

- c) **Crisis Management Limit of Insurance** shall mean Fifty Thousand Dollars (\$50,000). The **Crisis Management Limit of Insurance** is the most we will pay for all **Crisis Management Loss** under this policy, regardless of the number of **Crisis Management Events** first commencing during the **Policy Period**. This **Crisis Management Limit of Insurance** shall be in addition to the Limits of Insurance shown in Item 3 of the Declarations.
- d) **Crisis Management Loss** means the following amounts incurred during the pendency of a **Crisis Management Event**:
- i) amounts for the reasonable and necessary fees and expenses incurred by a **Crisis Management Company** in the performance of **Crisis Management Services** for the **Named Insured** solely arising from a covered **Crisis Management Event**; and
 - ii) amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of the **Named Insured** or the **Crisis Management Company**, solely arising from a covered **Crisis Management Event**.
- e) **Crisis Management Services** means those services performed by a **Crisis Management Company** in advising the **Named Insured** on minimizing potential harm to the **Named Insured** from a covered **Crisis Management Event** by maintaining and restoring public confidence in the **Named Insured**.
- f) **Key Executive** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, General Counsel or general partner (if the **Named Insured** is a partnership) of the **Named Insured** or sole proprietor (if the **Named Insured** is a sole proprietorship). A **Key Executive** also means any other person designated as such and scheduled by written endorsement.
- g) **Financial Loss** means a decrease of greater than 30% of the consolidated annual revenues of the **Named Insured**.
- 5) The following additional exclusions shall be applicable to the coverage provided by this extension:
- This insurance shall not apply to any **Crisis Management Loss** in connection with a **Crisis Management Event**:
- a) arising out of, based upon or attributable to the facts alleged, or to the same or related acts alleged or contained, in any crisis or claim that has been reported, or in any circumstances where notice has been given, under any policy of which:
 - i) this policy is a renewal or replacement or which it may succeed in time; or
 - ii) any underlying policy, which is listed in the Schedule of Underlying Insurance, is a renewal or replacement or which it may succeed in time; or
 - b) arising out of, based upon or attributable to any pending or prior crisis, claim, or **Suit** as of the inception date of this policy.
- 6) Any payments for **Crisis Management Loss** that we make under this endorsement shall not create any duty on our part to defend any **Suit** or to investigate any claim arising from a covered **Crisis Management Event**, nor any coverage obligations under this policy.
- 7) If this Crisis Communications Management Insurance and any other insurance issued to the **Named Insured** by us or any of our affiliated companies shall apply to the same crisis or claim, the maximum limit of insurance under all insurance available shall not exceed the highest applicable limit of insurance available under any one policy or extension. This condition does not apply to any other



insurance issued by us or any of our affiliated companies specifically to apply as excess insurance over this endorsement.

In Witness Whereof, we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by one of our duly authorised representatives, where required by law.

For **CHARTIS AUSTRALIA INSURANCE LIMITED**

Per. _____

Claims Contact Details

Melbourne

Level 12 717 Bourke Street, Docklands
Melbourne VIC 3008

Phone 1300 030 886
Fax 1300 634 940

Sydney

Level 19, , 2 Park Street
Sydney NSW 2000

Phone 1300 030 886
Fax 1300 634 940

Brisbane

Level 32, 10 Eagle Street
Brisbane QLD 4000

Phone 1300 030 886
Fax 1300 634 940

Perth

77 St George's Terrace
Perth WA 6000

Phone 1300 030 886
Fax 1300 634 940

Crisis Communications Management Insurance

Pre-Approved Crisis Management Company

Hill & Knowlton Australia Pty Limited
Level 12, 338 Pitt Street,
Sydney NSW 2000
Australia

1. First call: Andrew Sloan, Senior Adviser, Hill & Knowlton - Mobile phone: 0412 238 329; Home: 9481 8984; Office: (02) 9268 0242.
2. Second call: Brian West, Chief Executive Officer, Hill & Knowlton – Mobile phone: 0419 419 138; Home 9868 5870, Office: (02) 9268 0242.
3. Third call: Andrew Kirk, Associate Director, Hill & Knowlton – Mobile phone: 0411 300 366; 9743 6839; Office: (02) 9268 0242.



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