



Professional Indemnity Wording Miscellaneous Risks

Professional Indemnity Insurance Policy

Preamble

In consideration of the payment of the **Premium** and in reliance on the contents of the **Proposal**, the **Insurer** agrees to provide indemnity subject to the terms of this **Policy**.

SECTION 1 – INSURING CLAUSES

1.1 Professional Liability

The **Insurer** agrees to indemnify the **Insured** against any **Claim** for civil liability first made against the **Insured** during the **Period of Insurance** arising from the provision of **Professional Services**.

1.2 Defence Costs

The **Insurer** agrees to pay **Defence Costs** in respect of any **Claim** indemnified under insuring clause 1.1 or any applicable extension under section 1 of the **Policy**.

A. Automatic Extensions

These automatic extensions form part of the **Policy** and are subject to all of the **Policy** terms and conditions. With the exception of extension 1.3 (Automatic Reinstatement) the inclusion of these automatic extensions will be part of and not in addition to the **Limit of Liability** of the **Policy**.

1.3 Automatic Reinstatement

If the **Limit of Liability** is either partially or totally exhausted by the payment of a **Claim** under this **Policy**, the **Insurer** agrees to reinstate the **Limit of Liability** by an amount equal to the **Limit of Liability**

PROVIDED THAT:

- (a) the **Insurer's** total liability in respect of all **Claims** shall not exceed the **Limit of Liability in the Aggregate** in the **Schedule**; and
- (b) such reinstatement is only available to subsequent **Claims** totally unrelated to those that give rise to the partial or total exhaustion of the **Limit of Liability**.

1.4 Consumer Protection

The **Insurer** agrees to indemnify the **Insured** for any **Claim** for a misstatement or misrepresentation under the terms of the Competition and Consumer Act 2010 (Cth), National Consumer Credit Protection Act 2009 (Cth), the Australian Securities and Investments Commission Act 2001 (Cth) and the Corporation Act 2001 (Cth) or any **comparable legislation**.

arising from the performance of **Professional Services**.

1.5 Consultants, Contractors & Agents (Vicarious Liability)

The **Insurer** agrees to indemnify the **Insured** for any **Claim** for civil liability arising from the performance of **Professional Services** undertaken for and on behalf of the **Insured** by a consultant, contractor or agent PROVIDED THAT there is no indemnity available for the consultant's, contractor's, or agent's own liability, nor will the **Insurer** be prevented from seeking recovery against such consultant, contractor or agent.

1.6 Continuous Cover

- 1.6.1 Notwithstanding Policy Exclusion 3.8 (Prior **Claims** or **Circumstances**), and in the absence of fraudulent misrepresentation or non-disclosure by the **Insured**, the **Insurer** agrees to extend indemnity for any **Claim** arising from or attributable to or in consequence of any fact or circumstance which could have been, but which was not, notified under a previous professional indemnity insurance policy ("**Previous Policy**")

PROVIDED THAT:

- (a) if the fact or circumstance had been notified under the **Previous Policy**, the **Insured** would have been entitled to indemnity under this **Policy**;
 - (b) other than the **Insurer's** right to refuse indemnity due to:
 - (i) failure to disclose the fact or circumstance to the **Insurer** before this policy was entered into; or
 - (ii) the application of Exclusion 3.8;the **Insured** would be entitled to indemnity under this **Policy**; and
 - (c) the **Insured** has continued without interruption to be insured under a professional indemnity insurance policy with the **Insurer** from the time when the fact or circumstance could have been notified under the **Previous Policy** until the time when the **Claim**, fact or circumstance is notified to the **Insurer**.
- 1.6.2 The **Insurer's** liability for the **Claim** shall not exceed the amount of indemnity which would have been available under the **Previous Policy** if the fact or circumstance had been notified under the **Previous Policy** or the available **Limit of Liability** under this **Policy**, whichever is the lesser.

1.7 Contractors & Consultants

The definition of **Insured** is extended to include any contractor or consultant who:

- (a) is deemed a worker under the worker's compensation laws of the Australian State or Territory in which the contractor or consultant is performing the **Professional Services**; and
- (b) has a written contract with the **Insured** to perform **Professional Services**,

PROVIDED THAT cover is only provided for **Professional Services** performed for or on behalf of the **Insured**.

1.8 Costs of Official Inquiries

The **Insurer** agrees to indemnify the **Insured** for the reasonable costs and expenses (excluding the **Insured's** regular or overtime wages, salaries, fees, travel and accommodation expenses) incurred by the **Insurer**, or the reasonable costs incurred by the **Insured** with the **Insurer's** prior written consent (which shall not be unreasonably withheld), for the **Insured's** legal representation at any external inquiry or other similar process relating to or connected with the performance of the **Insured's Professional Services**, which the **Insured** is legally required or compelled to personally attend PROVIDED THAT:

- (a) the **Insurer** shall be entitled to nominate lawyers to represent the **Insured**;
- (b) the notice requiring the **Insured** to attend the inquiry or similar process is first served on the **Insured** during the **Period of Insurance**, and notified to the **Insurer** in writing as soon as practicable during the **Period of Insurance**;
- (c) there is no indemnity for legal representation at any inquiry or other similar process happening within the jurisdictional limits or territorial limits of the United States of America or its territories or protectorates; and
- (d) the **Insurer's** aggregate liability for all **Claims** under this clause shall not exceed \$250,000.

1.9 Court Appearance Costs

The **Insurer** agrees to indemnify the **Insured** for the reasonable costs and expenses incurred with the **Insurer's** prior written consent which any natural person who is an **Insured** incurs where they are legally compelled to personally attend a civil proceeding as a witness in a **Claim** covered by this **Policy**.

The **Insurer's** liability for all **Claims** under this clause shall not exceed \$500 per day per natural person and \$50,000 in the aggregate.

1.10 Cyber Disruption

The **Insurer** agrees to indemnify the **Insured** against civil liability for any **Loss** incurred by the **Insured** in respect of any **Claim** first made against the **Insured** and which is notified to the **Insurer** during the **Policy Period** arising from the **Insured's** failure to prevent the unauthorised access to, use of, or tampering with a **Computer System** by any third party (but not any **Insured**) in the performance of the **Professional Services** where such Loss arises from:

- (a) an attack using a **Computer Virus**; or
- (b) an attack by a computer hacker; or
- (c) the unintentional transmission of a **Computer Virus**; or
- (d) **Electronic Data Theft**.

The **Insurer's** aggregate liability for all **Claims** under this clause shall not exceed \$100,000.

1.11 Defamation

The **Insurer** agrees to indemnify the **Insured** for any **Claim** for unintentional libel, slander or defamation arising from the performance of **Professional Services**.

1.12 Extended Reporting Period

If this **Policy** is not renewed or replaced, the **Insured** shall be entitled to a further period of 30 days commencing from the end of the **Period of Insurance** during which time the **Insured** may notify the **Insurer** of any **Claim** under the **Policy** provided that **Claim** arises from **Professional Services** performed prior to the end of the **Period of Insurance**.

An **Extended Reporting Period** is not available if a **Change in Control** occurs.

1.13 Heirs, Estates and Legal Representatives

The **Insurer** agrees to indemnify the estate, heirs, executors, administrators or legal representatives of a natural person who is an **Insured** and incapable of managing their own affairs by virtue of death, incapacity or bankruptcy. Cover is provided as if the **Claim** had been brought against that **Insured** PROVIDED THAT there is no cover for any actual or alleged act or omission by the estate, heirs, executors, administrators or legal representatives themselves.

1.14 Innocent Party Indemnity

Notwithstanding Policy Exclusion 3.3 (Dishonest or Reckless Acts), the **Insurer** agrees to indemnify the **Insured** under this **Policy** where the **Claim** arises from a dishonest, fraudulent, criminal or malicious act or omission of any of the **Insured's Employees**, partners or directors PROVIDED THAT there is no indemnity under this clause for:

- (a) any person committing or condoning the act or omission;
- (b) any **loss** sustained as a result of any act or omission occurring after the date on which the **Insured** first discovers, or had reasonable cause for suspicion of, a dishonest, fraudulent, criminal or malicious act or omission on the part of any person;
- (c) loss of negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

1.15 Intellectual Property Rights

The **Insurer** agrees to indemnify the **Insured** for any **Claim** for unintentional:

- (a) infringement of copyright, trademarks, registered designs, patents, plagiarism; or
- (b) passing off; or
- (c) breach of confidentiality;

arising from the performance of **Professional Services**.

1.16 Joint Ventures

The **Insurer** agrees to indemnify the **Insured** against any **Claim** for civil liability arising from the performance of **Professional Services** by the **Insured** in their capacity as a joint venture partner but only to the extent of the **Insured's** proportion of any liability incurred by such joint venture.

Further, the **Insurer** will only pay for **Defence Costs** incurred by the **Insured** in respect of any such **Claim** solely in respect of the **Insured's** own liability as a joint venture partner.

1.17 Loss of Documents

1.17.1 The **Insurer** agrees to indemnify the **Insured** for the costs, charges and expenses, incurred with the **Insurer's** prior written consent, which they incur in replacing or restoring **Documents** (including but not limited to **Documents** which are the property of the Insured) which have been destroyed or damaged, or lost or mislaid and cannot be found after diligent search PROVIDED THAT:

- (a) the **Insured** first discovered the destruction, damage, loss or mislaying of the **Documents** and notifies the **Insurer** in writing during the **Period of Insurance**;
- (b) the **Documents** were in the **Insured's** physical custody or control or in the physical custody or control of another person to whom the **Insured** entrusted, lodged or deposited the **Documents** in the ordinary course of the **Insured's Professional Services**; and
- (c) the **Insurer's** aggregate liability for all **Claims** under this clause shall not exceed \$500,000 or the **Limit of Liability**, whichever is the lesser.

1.17.2 There is no indemnity under this clause for any costs, charges or expenses as a result of any **Document** being destroyed or damaged by normal wear, tear or other gradual processes.

1.18 New Subsidiaries

If during the **Period of Insurance** the **Insured** acquires or creates an entity so that it becomes a **Subsidiary** that has total revenue of less than 10% of the consolidated revenue of the **Insured**, then the **Policy** will automatically extend cover in respect of the **Subsidiary** without notice to the **Insurer** or additional premium being payable, but only in respect of **Professional Services** performed after such entity becomes a **Subsidiary**, PROVIDED THAT the new entity:

- (a) is incorporated in and performs **Professional Services** only within Australia or New Zealand; and
- (b) has no paid or incurred professional indemnity claims against it for the past 5 years preceding the date of acquisition.

1.19 Privacy

The **Insurer** agrees to indemnify the **Insured** against any **Claim** for civil liability arising from any actual or alleged breach of any Federal or State privacy legislation arising as a result of the performance of **Professional Services**.

1.20 Reputation Protection Expenses

The **Insurer** agrees to indemnify the **Insured** for the reasonable fees, costs and expenses, incurred with the **Insurer's** prior written consent (which shall not be unreasonably withheld) in retaining a public relations consultant for the sole purpose of protecting the **Insured's** professional reputation in connection with any **Claim** indemnified by this **Policy**. The **Insurer's** aggregate liability for all **Claims** under this clause shall not exceed \$100,000.

1.21 Automatic Run-Off

If during the **Period of Insurance** the **Insured** ceases to provide the **Professional Services** and submits to the **Insurer** a satisfactorily completed and signed Run-Off Declaration, then the **Period of Insurance** will be extended for 12 months from the date of such cessation, subject to receipt of the pro-rata premium requested by the **Insurer** PROVIDED THAT such cover shall only be available in respect of **Claims** arising from **Professional Services** provided by the **Insured** prior to the effective date of such cessation.

1.22 Statutory Liability

Notwithstanding Policy Exclusion 3.5 (Fines, Penalties and Damages), the **Insurer** agrees to indemnify the **Insured** under this **Policy** where the **Claim** arises from **Statutory Liability**.

The **Insurer's** aggregate liability for all **Claims** under this clause shall not exceed \$250,000.

SECTION 2 – LIMIT OF LIABILITY

2.1 Limit of Liability

- 2.1.1 Where the **Limit of Liability** is specified to be inclusive of **Defence Costs**, the **Insurer** agrees to pay **Defence Costs** for any **Claim** indemnified by this **Policy** PROVIDED THAT the total of the **Insurer's** liability including **Defence Costs** shall not exceed the **Limit of Liability**. The payment of **Defence Costs** under 2.1.1 hereof erodes the available **Limit of Liability**.
- 2.1.2 Where the **Limit of Liability** is specified to be exclusive of **Defence Costs**, the **Insurer** agrees to pay for **Defence Costs** in addition to the **Limit of Liability** for any **Claim** indemnified by this **Policy** PROVIDED THAT in the event any one Claim exceeds the **Limit of Liability** then the **Insurer's** liability for **Defence Costs** shall be only that proportion of them that the **Limit of Liability** bears to the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim**.

2.2 Claims Aggregation

- 2.2.1 All acts, errors and omissions which are in any way related or originate from one source or original cause shall jointly constitute a single act, error or omission for the purposes of this **Policy**.
- 2.2.2 Where a single act, error or omission gives rise to more than one **Claim**, all such **Claims** shall jointly constitute one **Claim** under the **Policy**, and only one **Excess** and one **Limit of Liability** shall be applicable in respect of such **Claim**.

2.3 Excess

- 2.3.1 The amount of the **Excess** shall be borne by the **Insured** at its own risk in respect of each **Claim**.
- 2.3.2 Where the quantum of any **Claim** is less than the **Excess**, the **Insured** shall be liable and remains uninsured for the **Claim** and the **Defence Costs**.
- 2.3.3 Where the **Excess** is specified to be inclusive of **Defence Costs**, the **Insured** shall pay the **Defence Costs** as they are incurred, up to the amount of the **Excess**.
- 2.3.4 Where the **Insured** is entitled to claim an **Input Tax Credit** for a payment made by the **Insured** as an **Excess**, then the monetary limit of the **Excess** will be deemed to be net of the **Input Tax Credit**.

SECTION 3 – EXCLUSIONS

The **Insurer** will not indemnify the **Insured** under any section of this **Policy** for any **Claim** directly or indirectly arising from:

3.1 Contractual or Commercial Liabilities

- (a) any liability assumed by any **Insured** or on behalf of any **Insured** under a contract, unless such liability would have attached to the **Insured** in the absence of such contract; or
- (b) any liability assumed by any **Insured** or on behalf of any **Insured** under any express guarantee or express warranty, unless such liability would have attached to the **Insured** in the absence of such warranty or guarantee; or
- (c) any duty or obligation assumed by any **Insured** or on behalf of any **Insured** that is not assumed in the normal conduct of the **Professional Services**; or
- (d) any trading debt incurred, or any guarantee provided in respect of such debt, by any **Insured** or on behalf of any **Insured**; or
- (e) any refund or waiver of professional fees (including any related expenses and disbursements).

3.2 Directors and Officers Liability

any duty, capacity, performance or non-performance as a director, member, officer, secretary or trustee.

3.3 Dishonest or Reckless Acts

any actual or alleged:

- (a) dishonest, fraudulent, criminal or malicious act;
- (b) wilful breach of any statute, contract or duty; or
- (c) conduct with a reckless disregard for the consequences thereof by the **Insured**.

This exclusion will only apply where it is established by an admission of such **Insured** or by a final judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

3.4 Employer's Liability

the **Insured's** liability as an employer, including **Personal Injury** of any person occurring in the course of their employment with the **Insured** (either as the **Insured's Employee** or as a contractor to the **Insured**).

For the purpose of this exclusion **Personal Injury** shall mean personal injury, sickness, disease, or the death of any person including but not limited to mental injury, anxiety, stress, emotional upset or nervous shock.

3.5 Fines, Penalties and Damages

any fines, penalties, punitive damages, exemplary damages, aggravated damages, or any other kind of non-compensatory damages.

3.6 Jurisdiction and Territorial Limits

- (a) any actual or alleged act, error or omission committed within the territorial limits of the United States of America or its territories or protectorates; or
- (b) which is brought in a court of law within the territorial limits of the United States of America or its territories or protectorates; or
- (c) any settlement or for the enforcement of any judgment or order obtained within the United States of America or its territories or protectorates.

3.7 Licensing

any act, error or omission committed, attempted or alleged to have been committed or attempted by any **Insured** or on behalf of any **Insured** in the conduct of any activity for which such person or entity is not properly licensed, registered or authorised in accordance with any relevant legislation or regulation.

3.8 Prior Claims or Circumstances

- (a) any written demand, legal proceeding or inquiry made, threatened or in any way intimated against the **Insured** prior to the **Period of Insurance**; or
- (b) attributable to, or in consequence of, any fact or circumstance:

of which written notice has been given under any previous professional indemnity or other insurance policy, or which is noted on the **Proposal** for the current **Period of Insurance** or on any previous proposal, or of which the **Insured** first became aware prior to the **Period of Insurance** and which the **Insured** knew, or ought reasonably to have known, might give rise to a claim under the **Policy**.

3.9 Radioactivity

ionising, radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.10 Related Entities

any **Claim** brought or maintained by, or on behalf of:

- (a) any **Insured** against another **Insured** unless the **Claim** is seeking contribution or indemnity which results directly from another **Claim** which would be covered under the **Policy** if made directly against such other **Insured**; or
- (b) any person who, at the time of the act, error or omission giving rise to the **Claim**, is a **Family Member** of the **Insured**; or
- (c) any entity operated or controlled by any **Insured** or **Family Member** of the **Insured**; or
- (d) any parent company or other entity which owns, operates or controls any **Insured**.

3.11 Retroactive Date

any act, error or omission occurring or committed prior to the Retroactive Date, unless specified as "Unlimited" on the **Schedule**, in which case this exclusion shall not apply.

3.12 Terrorism

caused or occasioned by or happening through or in consequence of terrorism or any action taken in controlling, preventing, suppressing any act or acts of terrorism or in any way relating thereto.

For the purposes of this clause, "terrorism" means any act or acts (whether threatened or actual) of any person or persons involving the causing or occasioning or threatening of harm of whatever nature and by whatever means made or claimed to be made in whole or in part for political, religious, ideological or similar purposes.

3.13 Waived or Limited Rights

the **Insured** in any way waiving, limiting or reducing their rights of recovery or contribution from any other party.

3.14 War

or caused by war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

SECTION 4 – GENERAL CONDITIONS

4.1 Change in Control

If during the **Period of Insurance** there is a **Change in Control** the **Policy** will convert into run-off for the remainder of the **Period of Insurance** with indemnity available only in respect of civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed prior to the effective date of the **Change in Control**.

4.2 Assignment of Interest

No change in, modification of, or assignment of, any interest under this **Policy** shall have effect at law unless made with the **Insurer's** written approval.

4.3 Cancellation

- (a) The **Insured** may cancel this **Policy** by giving notice in writing to the insurer at any time. Cancellation will take effect no earlier than the day on which such notice is received by the **Insurer**.
- (b) The **Insurer** may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect 7 days from the time the notice of cancellation is issued by the **Insurer**.
- (c) After cancellation a refund of premium will be allowed pro-rata of 80% of the premium for the unexpired portion of the **Policy Period**.

4.4 GST

Where under this **Policy** the **Insurer** is obliged to indemnify the **Insured** against any **Claim** or **Defence Costs** for which the **Insured** is entitled to an input tax credit for the Goods and Services Tax (GST), the amount of any such input tax will be deducted from any amount payable by the **Insurer**.

4.5 Policy Construction, Interpretation and Notices

- 4.5.1 The construction, interpretation and meaning of the terms of this **Policy** shall be determined in accordance with the laws of the state or territory in which this **Policy** is issued. Any dispute relating to this **Policy** shall be submitted to the exclusive jurisdiction of the courts of that state or territory.
- 4.5.2 The headings in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- 4.5.3 In this **Policy** words used in the singular shall include the plural and vice versa.
- 4.5.4 Any notice which the **Insurer** or the **Insured** are required or elect to give under this **Policy**, may be given to or by **Insurer**.

4.6 Material Change to Risk

The **Insured** shall notify the **Insurer** as soon as reasonably practicable of any material change in the risk that is the subject of this **Policy** during the **Policy Period**, including but not limited to:

- (a) any merger with, or acquisition of or by, another company, entity, partnership or business or the establishment of a subsidiary company or branch office;
- (b) the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any **Insured**;
- (c) any material change in the nature of the professional activities of any **Insured** as represented in the **Proposal Form**;
- (d) the cancellation, suspension or loss of, or the imposition of any restriction or limitation on, any license, registration or authorisation under any legislation or regulation applicable to any aspect of the **Professional Services**.

Where such notice is given, the **Insurer** shall be entitled to negotiate with the **Insured** the terms for the continuation of this **Policy**. The **Insurer** shall also be entitled to cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984.

The **Insurer** shall be entitled to reduce any indemnity or payment which may be available to the **Insured** under this **Policy** in respect of any **Loss, Defence Costs, Inquiry Costs**, settlement or any other payment to the extent of any prejudice suffered by the **Insurer** arising from any failure by the **Insured** to comply with this condition.

4.7 Sanction Limitation & Exclusion Clause

Notwithstanding anything to the contrary in this **Policy**, the **Insurer** will not be deemed to provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer** or its parent to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom, United States of America or other applicable jurisdiction.

4.8 Severability and Non-Imputation

4.8.1 Where an **Insured** is more than one person or entity and one or more of those persons or entities:

- (a) failed to comply with its duty of disclosure under section 21 or section 21A of the Insurance Contracts Act 1984 (Cth);
 - (b) made a misrepresentation to the **Insurer** before this **Policy** was entered into; or
 - (c) failed to comply with a term of this **Policy**;
- the rights of any other **Insured** under this **Policy** shall not be prejudiced as a result PROVIDED THAT the other **Insured**:
- i. acted in good faith in the performance of their or its duties and obligations both under this **Policy** and at law;
 - ii. was entirely innocent of, had no prior knowledge of, or did not have reasonable cause to suspect, the relevant conduct; and
 - iii. notifies the **Insurer** in writing of all facts known to them as soon as is reasonably practicable upon becoming aware of the relevant conduct

4.8.2 For the purposes of this clause, knowledge imputed to a person by reason of partnership or otherwise is to be disregarded.

4.8.3 This clause shall not operate to increase the **Limit of Liability** as stated in the **Schedule**.

4.9 Subrogation

- 4.9.1 If indemnity is granted under this **Policy** in respect of any **Loss, Defence Costs, Inquiry Costs**, settlement or any other payment, the **Insurer** shall be subrogated to all rights of recovery, contribution and indemnity of the **Insured** in respect of such **Loss, Defence Costs, Inquiry Costs**, settlement or payment.
- 4.9.2 The **Insured** must always act to secure and preserve all rights of recovery, contribution and indemnity, and must provide all necessary assistance and execute all documents to enable the **Insurer** to enforce those rights referred to in clause (above clause) 4.2ss.1.

SECTION 5 – CLAIMS CONDITIONS

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by APRA. The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. You may obtain further information about the FCS from www.fcs.gov.au and the APRA hotline on 1300 55 88 49.

5.1 Reporting Claims

The **Insured** must give **Ensurance**, as the agent for the **Insurer**, written notice as soon as practicable, and during the **Period of Insurance**, of any **Claim** made against the **Insured**. All notifications and other correspondence in respect of any **Claim** should be forwarded to:

Ensurance Australia Pty Ltd
Suite 1920, Level 19, 1 O'Connell Street, Sydney NSW 2000
Phone: [+61 \(08\) 8120 3289](tel:+61(08)81203289)
Email: claims@au.ensurance.ltd

(or admin@au.ensurance.ltd for other purposes)

Ensurance means Ensurance Australia Pty Ltd (ABN 21 608 877 783, Representative No. 001237371, Corporate Authorised Representative of Keystone Underwriting Australia Pty Ltd AFSL No: 518224).

5.2 Defence and Settlement

- 5.2.1 The **Insurer** shall be entitled at any time to take over and conduct, in the **Insured's** name, the defence or settlement of any **Claim**. Lawyers retained by the **Insurer** to act on the **Insured's** behalf shall at all times be at liberty to disclose to the **Insurer** any information or document obtained (whether by the **Insured** or otherwise) in the course of so acting, and the **Insured** agrees to waive any claim for client legal privilege to the extent that such privilege may otherwise prevent that disclosure to the **Insurer**.
- 5.2.2 The **Insured** must not settle any **Claim**, incur any **Defence Costs**, make any admission, offer any payment, or assume any contractual obligation in relation to any **Claim** without the **Insurer's** prior written consent (which consent shall not be unreasonably withheld). The **Insurer** shall not be liable for any settlement, **Defence Costs**, admission, offer or payment, or assumed obligation to which the **Insurer** has not consented in writing.
- 5.2.3 Where, in the **Insurer's** opinion, any **Claim** may not exceed the **Excess**, the **Insurer** shall be entitled to require the **Insured** to conduct the defence of that **Claim**. In this situation:
- the **Insured** shall keep the **Insurer** advised in writing of all developments relating to the defence and settlement of the **Claim** as they occur;
 - the **Insured** may settle the **Claim** without the **Insurer's** consent PROVIDED THAT they do not claim indemnity under this **Policy** in respect of the **Claim**; and
 - where it becomes apparent that the **Claim** will exceed the **Excess**, the **Insurer** shall be entitled to take over and conduct, in the **Insured's** name, the defence or settlement of the **Claim**, and the **Insurer** will reimburse the reasonable **Defence Costs** incurred to date by the **Insured**.
- 5.2.4 Where, in the **Insurer's** opinion, the liability of any **Claim** may exceed the available **Limit of Liability**, the **Insurer** shall be entitled at its discretion to discharge its liability by paying the available **Limit of Liability** to the **Insured** or on the **Insured's** behalf and paying the **Defence Costs** up to the date of that payment. In this situation:
- if at the time of payment the **Insurer** is conducting the defence of the **Claim**, the **Insurer** shall also relinquish that conduct; and
 - Policy** condition 2.1.1 shall still apply.

5.2.5 The **Insured** must, when instructed by the **Insurer** to do so, pay promptly within the terms of any proposed settlement the amount of the **Excess** . If the **Insured** fails or refuses to make that payment and the **Insurer** elects to make the payment on the **Insured's** behalf, the **Insurer** shall be entitled to deduct the amount from any entitlements the **Insured** may have at any time under this **Policy**.

5.3 Insured's Right to Contest a Claim

In the event that the **Insurer** recommends a settlement of any **Claim** but the **Insured** does not agree with the **Insurer's** recommendation, the **Insured** may elect to contest the **Claim** PROVIDED THAT if the actual liability for the **Claim** exceeds the amount for which, but for the **Insured's** election, the **Claim** could have been settled, then:

- (a) the **Insurer's** liability for the **Claim** shall be the amount for which, but for the **Insured's** election, a **Claim** could have been settled; and
- (b) the **Defence Costs** of the **Claim** shall be the **Defence Costs** incurred with the **Insurer's** prior written consent up to the date of the **Insured's** election.

5.4 The Insurer's Right to Contest a Claim

The **Insured** will not be required to contest any **Claim** unless a **Senior Counsel** (to be nominated by the **Insurer**) advises that the **Claim** should be contested. In formulating that advice, **Senior Counsel** shall take into consideration the economics of the matter, the likely liability together with **Defence Costs** and the prospects for successfully defending the **Claim**. The cost of the **Senior Counsel's** advice shall be regarded as part of the **Defence Costs**.

5.5 Claims Mitigation and Co-operation

5.5.1 The **Insured** must use due diligence and do and concur in doing all reasonable and practicable things in order to avoid, minimise or mitigate any liability, **loss** or damage that is or might be the subject of a **Claim**.

5.5.2 The **Insured** must disclose to the **Insurer** honestly and frankly all relevant information, and provide all information and assistance the **Insurer** requests to investigate and defend any **Claim**, to determine whether the **Insured** is entitled to indemnity under this **Policy**, or to prosecute any recovery action.

5.5.3 Compliance with clauses 5.5.1 and 5.5.2 shall be at the **Insured's** own cost.

SECTION 6 – DEFINITIONS

6.1 Change in Control

“Change in Control” means the happening of any of the following events during the **Period of Insurance**:

- (a) the **Insured** consolidating with, merging into or selling more than 50% of its assets resulting in the **Insured** no longer being an independent legal entity; or
- (b) any person or entity individually or acting in concert (other than a **Subsidiary**) becoming entitled to control more than 50% of the shareholder votes in the **Insured**; or
- (c) the **Insured** being placed into liquidation, under administration or wound up, becoming insolvent or having a receiver appointed to any part of the business.

6.2 Claim

“Claim” means:

- (a) the receipt by the **Insured** of a demand for compensation made by a third party against the **Insured**. It must take the form of:
 - (i) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third party or similar party notice; or
 - (ii) any other form of written notice; and where applicable
- (b) the making by the **Insured** of a claim against the **Insurer** under automatic extensions 1.8 (Costs of Official Inquiries) and 1.17 (Loss of Documents).

6.3 Comparable Legislation means

any provision of any predecessor or successor legislation with materially similar effect; or

- (a) any provision of any legislation applicable in another jurisdiction within the Commonwealth of Australia or New Zealand with materially similar effect;

6.4 Computer System

“Computer System” means

- (a) electronic, wireless, web or similar system, (including any hardware, firmware and software) used to process data or information, including computer programs, electronic data, operating systems, networking equipment, servers, mobile devices, web sites, and all input, output, processing, storage and online or offline media that is maintained by, or on behalf of, the **Insured** in the performance of the **Professional Services**; and which
- (b) is subject to appropriate data encryption and security protocols.

6.5 Computer Virus

“Computer Virus” means a set of instructions written in a computer language or code that is introduced to the Computer System of the **Insured** without the **Insured**’s knowledge or consent and commands the Computer System to maliciously process data or interact with ancillary equipment, including but not limited to malware, worms, trojans, rootkits, spyware, dishonest adware, crimeware, logic bombs and other malicious unwanted software.

6.6 Defence Costs

“Defence Costs” means the costs incurred by the **Insurer**, or the reasonable costs incurred by the **Insured** with the **Insurer’s** prior written consent, in the investigation, defence, reporting or negotiation for settlement of any **Claim** indemnified by the **Policy**.

It shall not include any costs of the party that is claiming against the **Insured**. It also does not include salaries, wages, allowances and other expenses incurred by the **Insured** in assessing, investigating and assisting with any **Claim**.

6.7 Documents

“Documents” means documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material BUT SHALL NOT INCLUDE money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

6.8 Electronic Data Theft

“Electronic Data Theft” means the unauthorised procuring or misuse of information by a third party (but not any **Insured**), which information is:

- (a) in electronic form; and
- (b) intended to interact with the **Computer System**; and
- (c) stored in the **Computer System** maintained by, or on behalf of, the **Insured** and protected by appropriate data encryption, security protocols, data backup and recovery procedures.

6.9 Employee

“Employee” means any person employed under a contract of service or apprenticeship but shall not mean a consultant, contractor or agent.

6.10 Excess

“Excess” means the excess specified in the **Schedule**.

6.11 Family Member

“Family Member” means:

- (a) any spouse, domestic partner or companion;
- (b) any parent, or parent of the spouse, domestic partner or companion; or
- (c) any sibling, child, adopted child or any child living with the person as if the child were a member of the person’s family.

6.12 Insured

“Insured” means:

- (a) the **Insured** specified in the **Schedule** and its **Subsidiaries**;
- (b) any person who is, was, becomes or ceases to be a principal, partner, director or **Employee** of the **Insured** or its **Subsidiaries** but solely in respect of a liability arising from **Professional Services** for and on behalf of that entity.

6.13 Insurer

“Insurer” means Liberty Mutual Insurance Company Australia Branch (ABN 61 086 083 605).

6.14 Inquiry Costs

“Inquiry Costs” means any reasonable and necessary fees, costs and expenses resulting solely from the representation of any Insured at an Inquiry including any investigation directly related to such representation but shall not include the travel, accommodation, salary or other employment related costs (including remuneration of any Principal) of any Insured.

6.15 Limit of Liability

“Limit of Liability” means the limit of liability specified in the **Schedule**.

6.16 Limit of Liability in the Aggregate

“Limit of Liability in the Aggregate” means the limit of liability in the aggregate specified in the **Schedule**.

6.17 Loss

“Loss” means compensatory damages and/ or claimant’s costs (whether awarded or by settlement with the prior written consent of the **Insurer**), but shall not include;

- (a) civil or criminal fines or penalties imposed by law; or
- (b) punitive, exemplary, multiple or aggravated damages; or
- (c) any amount uninsurable at law; or
- (d) any amount for which the Insured is not legally liable or for which there is no legal recourse to any Insured.

6.18 Period of Insurance

“Period of Insurance” means the period specified in the **Schedule**.

6.19 Policy

“Policy” means:

- (a) the insuring clauses, extensions, exclusions, conditions, definitions, **Schedule** and other terms contained herein;
- (b) any endorsement to this **Policy** whether issued at the inception of the **Policy** or during the **Period of Insurance**; and
- (c) the information provided by the **Insured** in the **Proposal**.

6.20 Premium

“Premium” means the premium specified in the **Schedule**.

6.21 Professional Services

“Professional Services” means the services specified in the **Schedule**, performed by or on behalf of **Insured**.

6.22 Proposal

“Proposal” means the written proposal by the **Insured** made to the **Insurer** containing information and statements which, together with any other information or documents provided, are the basis of this **Policy** and are considered incorporated in it.

6.23 Retroactive Date

“Retroactive Date” means the Retroactive Date specified in the **Schedule**.

6.24 Schedule

“Schedule” means the schedule to this **Policy**.

6.25 Statutory Liability

“Statutory Liability” means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- (a) an **Insured** for any civil offence;
- (b) an **Insured** for a strict liability offence in connection with the discharge, disbursal, release or escape of pollutants; or
- (c) an **Insured** for a strict liability offence in connection with a breach of occupational health and safety law or regulation,

but solely resulting from the conduct by the **Insured** of its **Professional Services** and only if the **Insurer** is not legally prohibited from paying the pecuniary penalties.

6.26 Subsidiary

“Subsidiary” means any entity where the **Insured** before or at any time during the

Period of Insurance, directly or indirectly:

- (a) controls the composition of the board of directors; and/or
- (b) controls the voting power at any general meeting; and/or
- (c) holds greater than 50% of the issued voting share capital; and/or
- (d) exercises effective controls of management, including of any joint venture.



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