

20140331 *pro*GLUE POLICY WORDING

Part 1: Preamble

- 1.1 Subject to the terms, conditions and exclusions of the **UNDERLYING INSURANCE** and the terms and conditions of this **POLICY**, **WE** will provide cover in excess of the cover described in the **UNDERLYING INSURANCE**.
- 1.2 For Part 3 - Additional Benefits, **WE** will provide cover in excess of the **SELF INSURED RETENTION**.
- 1.3 Unless stated otherwise, the intention is that the Policy should be interpreted consistently with the operation of the Underlying Insurance.
- 1.4 Where the terms, conditions or exclusions of the Underlying Insurance are incorporated into the Policy and where those terms, conditions or exclusions contain the words "We, us, our" or refer specifically to the name of the Underlying Insurer it is intended that in the context of interpreting the incorporated terms, conditions or exclusions the words "We, us, our" or specific reference to the Underlying Insurer means the insurance company named in the Schedule.

Part 2: Insurance Clause

- 2.1 Other than for Part 3 - Additional Benefits, subject to Parts 2.2 and 2.3, **WE** agree to indemnify **YOU** against all civil liability in excess of the amounts paid by the **UNDERLYING INSURER** of the **UNDERLYING INSURANCE** arising from any **CLAIM** that is first made against **YOU** during the **PERIOD OF INSURANCE**, in respect of any breach of professional duty by **YOU** owed in the conduct of the **PROFESSIONAL BUSINESS**.
- 2.2 Other than for Part 3 - Additional Benefits or for where Part 7.7 applies, **WE** will only indemnify **YOU** if the **UNDERLYING INSURER** has paid or has admitted liability or has been held liable to pay, the full amount of their indemnity inclusive of costs and expenses.
- 2.3 If by reason of the payment of any **CLAIM** or legal costs and expenses by the **UNDERLYING INSURER** during the **PERIOD OF INSURANCE**, the amount of indemnity provided by your **UNDERLYING INSURANCE** is:

- a. partially reduced, then this **POLICY** shall apply in excess of the reduced amount of the **UNDERLYING INSURANCE** for the remainder of the **PERIOD OF INSURANCE** of the **UNDERLYING INSURANCE**;
- b. totally exhausted, then this **POLICY** shall come into force as the **UNDERLYING INSURANCE** for the remainder of the **PERIOD OF INSURANCE** of this **POLICY**.

Part 3: Additional Benefits

3.1 **Liability Assumed under Contract (blanket basis):**

Where **YOU** have assumed liability under a written contract or written agreement and the assumed liability would not have existed without the written contract or written agreement subject to Parts 3.1 A, B, C, D and E **WE** agree to cover the assumed liability only to the extent required by the written contract or written agreement up to the **LIMIT OF LIABILITY** .

No cover is provided in respect of:

- a. a failure to perform a contract
- b. performance warranties or guarantees;
- c. awards of punitive damages, exemplary damages, aggravated damages or any fines or penalties;
- d. other than as provided in part 3.1 E. below, obligations to arrange insurance for the benefit of others;
- e. **YOUR** obligation to ensure **YOUR** subcontractors have the level and type of insurance cover that **YOU** are required to have but only where **YOU** know that **YOUR** subcontractor's insurance cover is inadequate.

3.2 **Principals as joint insured, waiver of subrogation, severability, primary:**

Where required under a written contract or written agreement and then only to the extent required by the written contract or written agreement, **WE** also agree:

- a. to include principals, their employees and agents as joint insureds;
- b. to waive all rights of subrogation against such principals, their employees and agents;

- c. except with respect to the **LIMITS OF LIABILITY** , that this **POLICY** applies to each insured as though a separate policy were issued to each and that any non-disclosure, misrepresentation or a breach of condition by any insured party will not adversely affect the cover provided under the **POLICY** to any other innocent insured party;
- d. that this **POLICY** is primary and non-contributory with respect to any other insurance of the principals, their employees and agents.

Provided that for principals or their employees or agents to be entitled to cover:

1. the principals or their employees or agents must observe and fulfil the terms and conditions of this Policy; and
2. **YOU** must also have a liability to the person or entity claiming against the principals, their employees or agents which arises from the same facts and circumstances.

Part 4: Limit of Liability

- 4.1: Subject to part 4.2, in each **PERIOD OF INSURANCE OUR** liability for any one **CLAIM**, or in the aggregate in respect for all **CLAIMS** under this **POLICY** , shall not exceed the **LIMIT OF LIABILITY**.
- 4.2 To the extent an **APPROVED SUB-LIMIT OF LIABILITY** applies our liability shall not exceed the **APPROVED SUB-LIMIT OF LIABILITY**.

Part 5: Defence Costs in Addition

- 5.1 **WE** will pay **DEFENCE COSTS** in addition to the **LIMIT OF LIABILITY** , in an amount not exceeding the **LIMIT OF LIABILITY**. To the extent an **APPROVED SUB-LIMIT OF LIABILITY** applies we will pay **DEFENCE COSTS** in an amount not exceeding the **APPROVED SUB-LIMIT OF LIABILITY**.
- 5.2 **WE** will only pay **DEFENCE COSTS** if:
 - a. **WE** incur them; or
 - b. **YOU** incur them after first obtaining **OUR** agreement in writing and the **DEFENCE COSTS** are in **OUR** view reasonable and necessary, and

- c. they relate directly to a **CLAIM** which forms or could form the subject of indemnity by this **POLICY**.

5.3 **WE** will not be obliged to defend, or to continue to defend, any **CLAIM** or pay, or continue to pay, any **DEFENCE COSTS** associated with such defence, once the **LIMIT OF LIABILITY** has been exhausted or if applicable an amount exceeding the **APPROVED SUB-LIMIT OF LIABILITY**.

Part 6: Exclusions

6.1 In addition to any **UNDERLYING INSURANCE** exclusions, **WE** will not cover you, including for **DEFENCE COSTS** or other loss if the **CLAIM** relates to a sub-limit of liability in the **UNDERLYING INSURANCE** which is not an **APPROVED SUB-LIMIT OF LIABILITY**.

Part 7: Terms and Conditions

In addition to any terms and conditions of the **UNDERLYING INSURANCE**, the following terms and conditions apply:

7.1 Adjustment of Premium

It is a condition precedent to this **POLICY** that within 30 days of the expiry of the **PERIOD OF INSURANCE**, you declare your actual income for the **PERIOD OF INSURANCE**. The declaration must be declared to **US** with 30 days of the end of the **PERIOD OF INSURANCE**, and settled within 30 days thereafter.

7.2 Australian Currency Clause

Unless stated otherwise, all **LIMITS OF LIABILITY**, premiums and other amounts as expressed in this **POLICY** are in Australian currency.

7.3 Australian Litigation Dispute Resolution Endorsement

WE hereon agree that;

- a. In the event of a dispute arising under this Insurance, at **YOUR** request, **WE** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- b. Any summons notice or process to be served upon **US** may be served upon:
Lloyds Australia Ltd

Suite 2, Level 2, Angel Place
123 Pitt Street
SYDNEY NSW 2000

who has the authority to accept service and to enter an appearance on **OUR** behalf, and who is directed at **YOUR** request to give a written undertaking to **YOU** that it will enter an appearance on **OUR** behalf.

- c. If a suit is instituted against **US**, **WE** will abide by the decision of such court or any competent Appellate Court.

7.4 **Cancellation of Insurance by You**

You may cancel the cover under this **POLICY** by giving written notice to

Edge Underwriting Pty Ltd.
PO Box 1141
West Perth WA 6005

A pro-rata portion of premium in respect of the unexpired period of the **POLICY** less a short-term-policy fee determined by **US** will be refunded. No refund will be given if there has been a **CLAIM** under this **POLICY**.

7.5 **Changes**

Except as otherwise provided, this **POLICY** is subject to the same terms, exclusions, conditions and definitions as provided by the **UNDERLYING INSURANCE**. No amendment to the **UNDERLYING INSURANCE** during the **PERIOD OF INSURANCE** of this **POLICY**, in respect of which the **UNDERLYING INSURER** requires an additional premium or deductible, shall be effective in extending the scope of this **POLICY** until agreed in writing by **US**.

7.6 **Claims**

- a. **YOU** must give **US** written notice as soon as practicable, and during the **PERIOD OF INSURANCE**, of any **CLAIM** made against **YOU**;
- b. In the event of a **CLAIM** arising to which **WE** may be liable to contribute, no costs shall be incurred on **OUR** behalf without **OUR** written consent being first obtained (such consent not to be unreasonably withheld). No settlement of a **CLAIM** shall be effected by you for such a sum as will involve this Policy without **OUR** consent.

- c. All recoveries or payments recovered or received subsequent to a loss or settlement under this **POLICY** shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between **YOU** and **US** provided always that nothing in this **POLICY** shall be construed to mean that loss or settlements under this **POLICY** are not payable until **YOUR** ultimate net loss has been finally ascertained.

7.7 **UNDERLYING INSURANCE to be maintained**

- a. The **UNDERLYING INSURANCE** listed in the **SCHEDULE** must remain in full effect throughout the **PERIOD OF INSURANCE** except for reduction of any aggregate limits due to payment of **CLAIMS**, settlements, or judgments.
- b. Failure to maintain the **UNDERLYING INSURANCE** will not invalidate this **POLICY**. In those circumstances, this **POLICY** will apply as if the **UNDERLYING INSURANCE** was in full effect. However **WE** will determine the extent to which the **UNDERLYING INSURER** would have been liable to indemnify **YOU** under the **UNDERLYING INSURANCE** and **WE** will only indemnify **YOU** under the **POLICY** in excess of the limit of indemnity and defence costs under the **UNDERLYING INSURANCE**.
- c. **YOU** must notify **US** immediately when any **UNDERLYING INSURANCE** is no longer in effect.

7.8 **Conduct of Proceedings**

- a. **WE** may elect at any time to take over and conduct in **YOUR** name any proceedings in relation to which **WE**:
 - i. Have advanced **DEFENCE COSTS** to **YOU**; or
 - ii. Are liable to indemnify **YOU** under this **POLICY**.

Part 8: Definitions

In addition to the definitions of the **UNDERLYING INSURANCE**, the following definitions apply to this **POLICY**. They are shown in uppercase, bold font and their meaning can be in the singular or plural. If there is a conflict between a definition of the **UNDERLYING INSURANCE** and a definition of this **POLICY**, the definition of this **POLICY** shall prevail.

- 8.1 **APPROVED SUB-LIMIT OF LIABILITY** means a sub-limit of liability specified in the **UNDERLYING INSURANCE** which has been declared to **US** in writing and which has been agreed to by **US** in writing. For the avoidance of doubt, the only **APPROVED SUB-LIMIT OF LIABILITY WE** have agreed to insure are those specified in the **SCHEDULE**.
- 8.2 **CLAIM** has the same meaning as the definition of that term in the **UNDERLYING INSURANCE**.
- 8.3 **DEFENCE COSTS** means the costs incurred by **US** or the reasonable costs incurred by **YOU** with **OUR** prior written consent, in the investigation, defence, reporting or negotiation for settlement of any **CLAIM**. It shall not include any costs of the party that is claiming against **YOU**. **DEFENCE COSTS** do not include your internal or overhead expenses or the cost of your time.
- 8.4 **LIMIT OF LIABILITY** means the maximum payable by **US** in respect of any one **CLAIM** under the **POLICY** and if more than one **CLAIM** the total amount payable by **US** in respect of all **CLAIMS** under the **POLICY**.
- 8.5 **PERIOD OF INSURANCE** means the period specified in the **SCHEDULE**.
- 8.6 **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 inception of the Policy or during the **PERIOD OF INSURANCE**; and
 - c. the information provided by **YOU** in the **PROPOSAL**.
- 8.7 **PROFESSIONAL BUSINESS** means the business or profession specified in the **SCHEDULE** and conducted by **YOU**.
- 8.8 **PROPOSAL** means the written proposal by **YOU** made to **US** containing information and statements which together with any other information or documents are the basis of this **POLICY** and considered incorporated in it.

- 8.9 **SCHEDULE** means the schedule to this **POLICY**.
- 8.10 **SELF-INSURED RETENTION** means the dollar amount listed in the **SCHEDULE** that will be paid by you for each **CLAIM** or series of **CLAIMS**, arising out of any one loss before the insurance becomes applicable. The applicable **LIMIT OF LIABILITY** will not be reduced by the amount of any **SELF-INSURED RETENTION** payable by **YOU**.
- 8.11 **UNDERLYING INSURANCE** means the insurance policies issued by the **UNDERLYING INSURER** that are listed in the **SCHEDULE**.
- 8.12 **UNDERLYING INSURER** means the insurer(s) of the **UNDERLYING INSURANCE**.
- 8.13 **YOU** means the person, partnership, company or other entity specified as the Insured in the **SCHEDULE** and where applicable the person, partnership, company or other entity referred to Part 3.2A of the **POLICY**
- 8.14 **WE, US, OUR** means the insurance company named in the **SCHEDULE**.