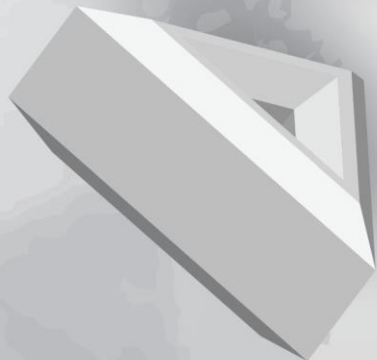
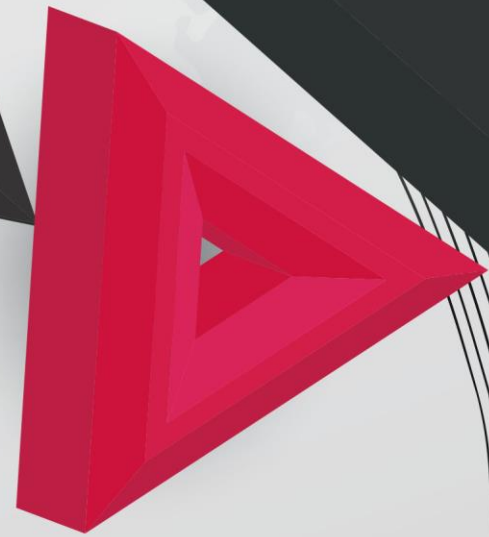


# PROFESSIONAL INDEMNITY INSURANCE

*Accountant's Policy*



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# GENERAL INSURANCE CODE OF PRACTICE

We have adopted the General Insurance Code of Practice which has the following objectives:

- to commit us to high standards of service;
- to promote better, more informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between us and you; and
- to promote continuous improvement of the general insurance industry through education and training.

If you would like further information in regard to the Code of Practice please refer to the Code of Practice website

[www.codeofpractice.com.au](http://www.codeofpractice.com.au)

# Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms. You have this duty until we agree to insure you.

Your duty of disclosure before you renew, extend, vary or reinstate an insurance contract is to tell us before the renewal, variation, extension, reinstatement or replacement is made, every matter known to you which:

- you know, or
- a reasonable person in the circumstances could be expected to know, is relevant to our decision whether to insure you and whether any special conditions need to apply to your policy

Your duty however does not require disclosure of any matter:

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That your insurer knows or, in the ordinary course of this business, ought to know;
- As to which compliance with your duty is waived by the insurer.

If we request personal information about you and you do not provide it, we may not be able to provide you with the insurance product you request, manage or pay any claim under an insurance policy or provide you with the full range of services we offer.

# PRIVACY COLLECTION STATEMENT

We are committed to safeguarding and protecting your privacy. We are bound by the provisions of the Privacy Act 1988 (Cth) which sets out the standards to meet in the collection, use and disclosure of personal information. We will only collect personal information from you to allow us to quote on and insure your risks and matters incidental thereto, including investigating, processing and managing claims.

We may provide your personal information to others, such as our related bodies corporate, other insurers or our reinsurers, claims investigators, lawyers and other professionals, and government bodies. Some of these recipients may be outside of Australia, such as to Europe, the United Kingdom, India, Poland and the United States. Any disclosure outside Australia will be in compliance with the Privacy Act. We will not under any circumstances trade, rent or sell your information.

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

If you wish to access or correct your personal information, or wish to raise any concerns as to how we handle your personal information, please write to:

## **The Privacy Officer**

Brooklyn Underwriting  
Level 28, Angel Place  
123 Pitt Street  
Sydney NSW 2000

E: [privacyaustralia@axaxl.com](mailto:privacyaustralia@axaxl.com)

For further details on how we manage your information, please see our Privacy Policy on our website:  
<http://www.brooklynunderwriting.com.au/>

Brooklyn Underwriting is part of AXA XL, a division of AXA. If you require further information about how we deal with your personal information under European Economic Area (EEA) data protection laws, please refer to the AXA XL European Privacy Notice at <https://axaxl.com/privacy-notice> or contact the Privacy Officer using the contact details above.

# COMPLAINTS

We strive to provide a quality service to you. However, we understand that occasionally there may be some aspect of our service or a decision made by us that you would like to discuss with us. If you have a complaint about our products or the service you have received from us, please contact your insurance broker to initiate the complaint with us.

In most cases we will be able to resolve this matter once contact is made by you. If we cannot, you will be referred to a manager who will attempt to resolve the matter.

If you are not happy with our response, you may have the matter reviewed by our Internal Dispute Resolution (IDR) process which is free of charge. You can contact our IDR department at [apacompliance@axaxl.com](mailto:apacompliance@axaxl.com) or by mail to:

## The Complaints Officer

AXA XL

Level 28, Angel Place

123 Pitt Street, Sydney NSW 2000

The IDR Department will contact you with a decision within fifteen (15) business days of receiving your complaint.

If you are not satisfied with the outcome of the IDR process and would like to take the complaint further, you may refer the matter to the Australian Financial Complaints Authority (AFCA), an independent and external dispute resolution scheme at no cost to you, subject to the terms of reference.

AFCA can be contacted:

By post: GPO Box 3, Melbourne VIC 3001

By phone: 1800 931 678

By email: [info@afca.org.au](mailto:info@afca.org.au)

More information can be found on their website [www.afca.org.au](http://www.afca.org.au)

If your complaint is not covered by the AFCA scheme, we will advise you of other options for resolution that may be available to you.

# PREAMBLE

This is a claims made and notified insurance policy whereby the **insurer** has accepted the **proposal form** from the **insured**. The **insurer** has relied on the information contained in the **proposal form** in determining whether to enter into this **policy** and the terms, conditions and exclusions of this **policy**.

The **insurer** agrees with the **insured** to provide insurance in accordance with the terms of this **policy** in consideration of payment in full of the premium and any associated charges specified in the **schedule** or any endorsement to this **policy**.

# INSURING CLAUSES

## *A1 Professional Liability*

The **insurer** will 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 performance of the **professional services** by or on behalf of the **named insured**.

Supplementary to clause F7 (Definition of Civil Liability) of this **policy**, **civil liability** includes, but is not limited to, legal liability arising from the following civil causes of action;

### **A1.1 Consumer Protection**

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 Corporations Act 2001 (Cth) or any **comparable legislation**.

### **A1.2 Implied Warranties & Statutory Guarantees**

a breach of an implied warranty or statutory guarantee in relation to merchantable or acceptable quality, due care and skill or fitness for purpose implied in a contract, at common law and/ or the terms of the Competition and Consumer Act 2010 (Cth) or any **comparable legislation**.

### **A1.3 Intellectual Property Rights**

an infringement of **intellectual property rights**.

### **A1.4 Confidentiality**

a breach of confidence or misuse of any information which is either confidential or subject to restrictions as to its use, including a breach of any legislation or regulation governing the collection, storage, management, disclosure of any personal information of any client of the **insured**.

### **A1.5 Defamation**

an allegation of libel, slander or defamation.

### **A1.6 Fiduciary Duty**

a breach of fiduciary duty.

### **A1.7 Privacy**

a breach of, or unlawful interference with, privacy.



## *A2 Advancement of Defence Costs*

- (a) The **insurer** will pay **defence costs** as and when they are incurred by the **insurer** or by the **insured** with the prior written consent of the **insurer**.
- (b) The **insurer** will pay **defence costs** in addition to the **limit of indemnity**, but only up to an amount equal to the **limit of indemnity**.

However, in the event that the **insurer** makes any payment on behalf of any **insured** under this clause to which it is ultimately determined such **insured** is not entitled under this **policy**, each such **insured** must repay the **insurer** the amount of such payment immediately on demand.

# AUTOMATIC EXTENSIONS

The following Extensions are automatically included in this **policy** and are always subject to the other terms, conditions and exclusions of this **policy** unless specifically expressed to the contrary.

In no event will the operation of any Automatic Extension increase the **limit of indemnity**.

## *B1 Inquiry Costs*

The **insurer** will pay **inquiry costs** as and when they are incurred by the **insurer** or by any **insured** with the prior written consent of the **insurer** in respect of an **inquiry** provided that:

- (a) the **insured** is legally required or compelled to attend such **inquiry**; and
- (b) such **inquiry** pertains to the performance of the **professional services** by or on behalf of the **named insured** or matters directly arising therefrom; and
- (c) written notice of such **inquiry** is first received by the **insured** during the **policy period** and notified to the **insurer** during the **policy period**; and
- (d) the **insurer** is entitled, at its sole discretion, to appoint legal or other representation for the **insured** at such **inquiry**; and
- (a) the aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.
- (e)

## *B2 Loss of Documents*

The **insurer** will indemnify the **insured** for any reasonable and necessary costs and expenses incurred by the **insured** with the prior written consent of the **insurer** to replace and/or restore any **documents** which have been damaged, destroyed or lost and after diligent search cannot be found, provided that:

- (a) such **documents** were damaged, destroyed or lost in the performance of the **professional services** by or on behalf of the **named insured**; and
- (b) such **documents** were owned by a third party and were in the physical possession of the **insured**; and
- (c) the subject damage, destruction or **loss** is first discovered by the **insured** and notified to the **insurer** during the **policy period**; and
- (d) notwithstanding anything to the contrary in this Extension, the **insurer** will not indemnify the **insured** in respect of any damage, destruction or loss of any **documents** directly or indirectly arising from, in whole or in part:
  - i. wear and tear or any other gradual process; or
  - ii. any **computer virus** or other malicious or damaging software; or
  - iii. any act, error or omission committed or made, or allegedly committed or made, by any person or entity who at the time of such act, error or omission was not an **insured**; and

- (e) the **insured** provides satisfactory documentary proof of such damage, destruction or loss; and
- (f) the aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

### ***B3 Dishonesty & Deliberate Conduct***

The **insurer** will 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** and which would otherwise be excluded only by reason of clause D1 (Dishonesty or Deliberate Conduct Exclusion) of this **policy**.

The **insurer** will also pay (in accordance with the applicable provisions of this **policy**) any **defence costs** and **inquiry costs** that would otherwise be excluded only by reason of clause D1 (Dishonesty or Deliberate Conduct Exclusion) of this **policy**.

However, this Extension does not operate to:

- (a) indemnify, or pay any **defence costs** or **inquiry costs** on behalf of, any party comprising the **insured** engaging in or condoning any dishonest, fraudulent, criminal, malicious, reckless or wilful conduct that is the subject of clause D1 (Dishonesty or Deliberate Conduct Exclusion), but only where such conduct has been established by the judgment of a court of law or other final adjudication or determination from any appropriate official or legally constituted body; or
- (b) indemnify the **insured** for any **loss**, settlement or other payment, or pay any **defence costs** or **inquiry costs**, directly or indirectly arising out of, based upon, attributable to or in consequence of any conduct occurring after the date on which the **insured** first discovered, or had reasonable cause for suspicion of, any dishonest, fraudulent, criminal, malicious, reckless or wilful conduct that is the subject of clause D1 (Dishonesty or Deliberate Conduct Exclusion).

The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

### ***B4 Reputation Protection***

- (a) The **insurer** will indemnify the **insured** for 50% of the reasonable and necessary costs and expenses directly incurred by the **insured** with the prior written consent of the **insurer** in seeking advice from a reputable public relations consultant solely for the purpose of protecting the professional reputation of the **insured** that has been brought into question as a direct result of a **claim** or **inquiry** that is the subject of indemnity under this **policy**.

Such indemnity will be subject to:

- i. the **insured** providing written notice to the **insurer** within 30 days of first becoming aware of the professional reputation of the **insured** being brought into question; and
  - ii. the **insured** providing prior written notice to the **insurer** within 30 days of the subject **claim** or **inquiry** being finalised of the intention to incur such costs and expenses.
- (b) Notwithstanding anything to the contrary in this **policy**, clause E2 (Retention) of this **policy** will not apply in respect of any indemnity which may be available under this Extension, however the **insured** will bear uninsured the 50% of costs and expenses not indemnified under clause (a) above.
  - (c) The onus of, and any costs and expenses incurred in, proving entitlement to indemnity under this Extension will rest solely

with the **insured**.

- (d) The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

## **B5** *Civil Fines and Penalties*

- (a) Clause F8 (Definition of Claim) of this **policy** is extended to include any legal or administrative proceedings seeking compensatory civil penalties arising directly from the performance of the **professional services**.
- (b) Clause F27 (Definition of Loss) of this **policy** is extended to include any compensatory civil penalties.
- (c) However, the **insurer** will not indemnify the **insured** for any compensatory civil penalty in connection with any;
- i. wilful or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - ii. gross negligence or recklessness; or
  - iii. requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

## **B6** *Cyber Disruption*

- (a) The **insurer** will 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:
- i. an attack using a **computer virus**; or
  - ii. an attack by a computer hacker; or
  - iii. the unintentional transmission of a **computer virus**; or
  - iv. **electronic data theft**.
- (b) The **insurer** will indemnify the **insured** for **technology expenses** incurred directly in connection with any **cyber attack** perpetrated by a third party (but not any **insured**), but only on the basis that;
- i. the **insured** provides written notice to the **insurer** as soon as practicable after first discovering the **cyber attack**, but always during the **policy period**; and
  - ii. such indemnity is limited to \$500 per day in respect of any one **cyber attack**; and
  - iii. the **insured** must undertake any reasonably practicable measures to diminish the duration of a **cyber attack**.
- (c) Clause E2 (Retention) of this **policy** will apply to clause (a) of this Extension.
- (d) Clause E2 (Retention) of this **policy** will not apply to clause (b) of this Extension; however, any indemnity available under

clause (b) of this Extension will be subject to an uninsured period of 72 hours from 9:00am on the day on which the **cyber attack** was first discovered by the **insured**.

The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

### ***B7 Claims or Inquiries Preparation Costs***

- (a) The **insurer** will indemnify the **insured** for 50% of the reasonable and necessary costs and expenses incurred by the **insured** with the prior written consent of the **insurer** specifically for the preparation of the defence or investigation of any **claim** or **inquiry** that is the subject of indemnity under this **policy**.
- (b) Notwithstanding anything to the contrary in this **policy**, clause E2 (Retention) of this **policy** will not apply in respect of any indemnity which may be available under this extension, however the **insured** will bear uninsured the 50% of costs and expenses not indemnified under clause B7 (a) above.
- (c) No indemnity will be provided under this Extension in respect of any **defence costs** or **inquiry costs**.
- (d) The onus of, and any costs and expenses incurred in, proving entitlement to indemnity this Extension will rest solely with the **insured**.
- (e) The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

### ***B8 Vicarious Liability***

The **insurer** will 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 performance of the **professional services** for or on behalf of the **named insured** by any **agent**.

This Extension does not operate to indemnify any such **agent** themselves.

### ***B9 Contract Staff***

Clause F17 (Definition of Employee) of this **policy** is extended to include any **agent** who is or was engaged by any party comprising the **named insured** pursuant to a written contract or agreement to provide **professional services** for or on behalf of such **named insured** but only in respect of such **professional services** performed;

- (a) for or on behalf of a **named insured**; and
- (b) by an appropriately qualified professional person; and
- (c) under the direct control and supervision of a **named insured**; and
- (d) during the currency of such contract or agreement.

### ***B10 Extended Reporting Period***

In the event that this **policy** is neither renewed nor replaced by the **insured** with a policy or policies intended to provide indemnity

on a similar basis to this **policy**, then the **insured** will be entitled to a period of 30 days commencing from the end of the **policy period** during which time the **insured** may notify a **claim** to the **insurer**, but only where the **claim** was first made against the **insured** during the **policy period**.

### *B11 Joint Venture Liability*

The **insurer** will 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 performance of **professional services** by any **named insured** in their capacity as a joint venture partner whilst engaged in any unincorporated joint venture.

This Extension does not operate to indemnify any such joint venture partner of the **named insured**.

### *B12 Continuous Cover*

Where the **insured** has failed to exercise their rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in relation to an earlier professional indemnity insurance policy issued to the **named insured** by or on behalf of the **insurer**, then clause D14(c) (Known Circumstances Exclusion) of this **policy** will not apply to the facts, circumstances, acts, errors or omissions to which such unexercised rights apply provided that:

- (a) the **named insured** has been continuously insured, without interruption at the commencement of the **policy period**, under a professional indemnity insurance policy issued to the **named insured** by the **insurer** from the earliest time at which the **insured** could have reasonably first exercised their rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) in respect of the subject facts, circumstances, acts, errors or omissions; and
- (b) there has been no fraudulent misrepresentation or fraudulent non-disclosure by the **insured** in respect of the subject facts, circumstances, acts, errors or omissions; and
- (c) the **insurer** may reduce their liability to indemnify the **insured** or make any payment by reason of this extension to the extent that the **insurer** has been prejudiced by the failure of the **insured** to exercise their rights pursuant to Section 40(3) of the Insurance Contracts Act 1984 (Cth) at the earliest time at which the **insured** could have reasonably first exercised such rights in respect of the subject facts, circumstances, acts, errors or omissions; and
- (d) in determining any prejudice referred to in (c) above, the **insurer** may take into account any factors the **insurer** may deem to be material including, but not limited to, the limits of indemnity, sub-limits, terms, conditions and exclusions of any applicable earlier professional indemnity insurance policy.

### *B13 New Subsidiaries*

Clause F28 (Definition of Named Insured) of this **policy** is extended to include any **subsidiary** created or acquired by the **named insured** during the **policy period** for a maximum period of 30 days from the effective date of such creation or acquisition, provided that such period does not extend beyond the expiry of the **policy period**, but only on the basis that;

- (a) the **professional services** performed by the **subsidiary** are consistent with clause F33 (Definition of Professional Services) of this **policy**; and
- (b) the applicable **retroactive date** will be the effective date of the creation or acquisition of the **subsidiary**;

unless the **insurer** agrees in writing to include such **subsidiary** under clause F28 (Definition of Named Insured) of this **policy**.

## *B14 Estates & Legal Representatives*

In the event of the death, legal incapacity or bankruptcy of any natural person comprising the **insured**, the **insurer** will indemnify the estate, heirs, legal representatives or legal assignees of such **insured** in respect of any **claim** made against such estate, heirs, legal representatives or legal assignees and which arises from the performance of the **professionalservices** by or on behalf of the **named insured**, as if such a **claim** had been made against the respective **insured**.

This Extension does not operate to indemnify any such estate, heirs, legal representatives or legal assignees for any **loss**, settlement or any other payment, or pay any **defence costs** or **inquiry costs**, directly or indirectly arising out of, based upon, attributable to or in consequence of their own conduct.

## *B15 External Engagements*

Notwithstanding clause D18 (Directors' & Officers' Liability Exclusion) or D28(d) (Related Parties Exclusion) of this **policy**, the **insurer** will 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 performance of any external engagements held by a natural person (who is also a **principal** of the **insured**) in the capacity as a trustee, executor, receiver, manager, liquidator, administrator, director or secretary of a proprietary company, or as treasurer, manager or chairperson of a charity or Not For Profit organisation, but only on the basis that;

- (a) any fees received from such engagements are declared as part of the gross professional fees for the **professional services**; or
- (b) where no fee is received for such engagement, the engagement must be held by such natural person on behalf of or with the written consent of the partnership or corporation comprising the **named insured**.

## *B16 Breach of Auditing Standards*

- (a) Notwithstanding Clause D1 (Dishonesty or Deliberate Conduct Exclusion) and F27 (Definition of Loss), of this **policy**, the **insurer** will indemnify the **insured** for legal liability for any strict liability penalties or compensation orders incurred by the **insured** directly as a result of any actual or alleged breach of:
  - i. Australian Auditing Standards in relation to audits which are subject to the provisions of the Corporations Act 2001 (Cth); or
  - ii. Tax Agents Services Act 2009 (Cth); or
  - iii. Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth).
- (b) In the event that the **insurer** makes any payment on behalf of any **insured** under this Extension to which it is ultimately determined such **insured** is not entitled under this **policy**, each such **insured** must repay the **insurer** the amount of such payment immediately on demand.

# OPTIONAL EXTENSIONS

The following Extensions are only included in this **policy** where agreed by the **insurer** and so specified as applicable under Optional Extensions in the **schedule**. All such Extensions are always subject to the other terms, conditions and exclusions of this **policy** unless specifically expressed to the contrary.

In no event will the operation of any Optional Extension increase the **limit of indemnity**.

## *C1 Automatic Reinstatement*

The **insurer** agrees to reinstate the **limit of indemnity** in respect of **loss, defence costs, inquiry costs**, settlements or any other payments arising from subsequent **claims** or **inquiries** unrelated to any previously notified **claim** or **inquiry**; however the aggregate amount so reinstated in respect of all **loss, defence costs, inquiry costs**, settlements and any other payments which may be the subject of indemnity under this **policy** will not exceed the **limit of indemnity** (subject always to any applicable Sub-Limit specified in any Extension or in the **schedule**).

The liability of the **insurer** for all **loss, defence costs**, settlements and any other payments in respect of any single **claim** will not exceed the **limit of indemnity**.

Reinstatement under this Extension only applies in excess of the total aggregate indemnity available under any policy or policies which apply in excess of this **policy** and after such policies are exhausted.

## *C2 Fidelity*

Notwithstanding Clause D1 (Dishonesty or Deliberate Conduct Exclusion) and Clause D2 (Fidelity Exclusion) of this **policy**, the **insurer** will indemnify the **insured** against the direct loss of any **currency** in the care, custody or control of any **named insured** or any **agent**:

- (a) which is the property of any **named insured**; or
- (b) for which any **named insured** is legally responsible;

arising from any dishonest or fraudulent act, omission or conduct by any **employee** or any **agent** in the conduct of the **professional services** provided that:

- i. the **insured** first discovers the loss during the **policy period**; and
- ii. the **insured** notifies the **insurer** in writing of the loss of **currency** as soon as practicable after the **insured** discovers the loss and in any event within 21 days of such discovery; and
- iii. the **insured** will bear the burden of proving any such loss of **currency** and any costs or expenses incurred by the **insured** in proving the same; and
- iv. the **insured** will give the **insurer** all necessary information and assistance to recover such loss from any person



- committing or condoning the dishonest or fraudulent act, omission or conduct giving rise to the loss of **currency**; and
- v. the **insurer** will not be liable to indemnify the **insured** under this Extension for any loss sustained as a consequence of any dishonest or fraudulent act, omission or conduct occurring after the date on which the **insured** discovered, or had reasonable cause for suspicion of, the dishonest or fraudulent act, omission or conduct; and
  - vi. the **insurer** will not be liable under this Extension to indemnify any **insured** who personally committed or condoned any dishonest or fraudulent act, omission or conduct giving rise to the loss of **currency**; and
  - vii. any indemnity that may be available to the **insured** under this Extension shall be reduced by the amount of any moneys that are payable by the **insured** (including but not limited to salary, wages, bonuses, fees, expenses, dividends, loans and equity) to any **employee** or **agent** who committed or condoned the dishonest or fraudulent act, omission or conduct giving rise to the loss of **currency**.

The **insurer** will only be liable to indemnify the **insured** under this Extension for such amount of any loss of **currency** which is in excess of the **retention**. The **retention** is to be borne by the **insured** in respect of each and every dishonest or fraudulent act or omission giving rise to the loss of **currency** and will remain uninsured.

- (c) The aggregate amount of all payments made by the **insurer** pursuant to this Extension will not exceed the Sub-Limit applicable to this Extension as specified in the **schedule**.

### ***C3 External Complaints Resolution Scheme***

- (a) Clause F8 (Definition of Claim) of this **policy** is amended to include a written complaint made against the **insured** to an **external complaints resolution scheme** pursuant to the applicable **terms of reference**.
- (b) The **insured** will at the written request of the **insurer** exercise any rights the **insured** may have pursuant to the applicable **terms of reference** of the **external complaints resolution scheme** to withdraw any **claim** which may be the subject of indemnity under this **policy** from the jurisdiction of the **external complaints resolution scheme**.
- (c) In the event of such a request, any third party costs and expenses for which the **insured** becomes liable pursuant to the applicable **terms of reference** in respect of the **claim** will be deemed to be included in the definition of **loss** in respect of such **claim**.

### ***C4 Limited Australian Financial Services Licence***

Notwithstanding Clause D5 (Financial Planning Services Exclusion), Clause F33 (Definition of Professional Services) of this **policy**, is extended to include financial services performed by the **insured** or any **agent** directly in connection with a **Limited Australian Financial Services Licence**, held by the **insured** or by a third party for whom the **insured** performs such services under a written agreement or contract.

### ***C5 Principal's Previous Business***

The **insurer** will indemnify any past or present **principal** of any **named insured** against **civil liability** for any **loss** incurred by such **principal** in respect of any **claim** first made against such **principal** and which is notified to the **insurer** during the **policy period** arising from the performance of professional services by such **principal** for a **previous business**, provided always that;

- (a) the professional services conducted for such **previous business** were materially the same as the **professional services** performed by the **named insured**; and
- (b) the applicable **retroactive date** is the date specified by endorsement to this **policy**; and
- (c) no indemnity for such **loss** is available under any other insurance policy; and
- (d) the extent of indemnity available in respect of such **loss** will be subject to the terms, conditions and exclusions of this **policy**.

Prior to providing this Extension, the **insurer**, may require additional information regarding the **previous business** and an additional premium may apply.

# EXCLUSIONS

The **insurer** will not be liable to indemnify the **insured** for any **loss**, settlement or other payment, or pay any **defence costs** or **inquiry costs**, directly or indirectly arising out of, based upon, attributable to or in consequence of:

## *D1 Dishonesty or Deliberate Conduct*

- (a) any actual or alleged dishonest, fraudulent, criminal or malicious conduct of any **insured**, or any **agent**; or
- (b) any conduct of any **insured** or any **agent** committed or allegedly committed with a reckless disregard for the consequences thereof; or
- (c) any conduct of any **insured** or any **agent** committed or allegedly committed with criminal intent or purpose, or with knowledge that such conduct was in breach of any statute, contract, right or duty; or
- (d) any actual or alleged wilful or deliberate conduct on the part of any **insured** or any **agent**, for the actual or alleged purpose of which was to:
  - i. profit from information not generally available to market participants; or
  - ii. create a false or misleading impression as to the value of any **investments**; or
  - iii. distort any market in **investments**.

## *D2 Fidelity*

any loss of money, precious metal, precious or semi-precious gemstones, negotiable instruments (including but not limited to shares, bearer bonds, coupons, stamps, bank or currency notes) in the custody or control of the **insured** or any **agent**;

## *D3 Insolvency*

any liquidation, receivership, bankruptcy or insolvency of any **insured**;

## *D4 Contractual or Commercial Liabilities*

- (a) any liability assumed by any **insured** or any **agent** 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 any **agent** 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 express guarantee or express warranty provided by, or on behalf of any **insured** or any **agent**, in respect of the present or future value of, or return on, any **investments**; or
- (d) any duty or obligation assumed by any **insured** or any **agent** on behalf of any **insured** that is not assumed in the normal conduct of the **professional services**; or
- (e) any trading debt incurred, or any guarantee or other undertaking provided in respect of such debt, by any **insured** or any **agent** on behalf of any **insured**; or

(f) any refund or waiver of professional fees (including any related expenses and disbursements).

### *D5 Financial Planning Services*

the actual or alleged provision of, or failure to provide, any investment, superannuation or wealth creation advice or any other advice or services by or on behalf of the **insured** or any **agent** for which an **Australian Financial Services Licence** is required, except only to the extent that indemnity is provided under clause C4 (Limited AFS License Optional Extension), where the **insurer** has agreed to provide this Optional Extension, of this **policy**.

### *D6 Market Manipulation*

any actual or alleged dealings of any nature by which it was sought, or allegedly sought, to affect the price of, or market in, any **investments** or of any negotiable instrument, other than dealings carried out in complete accordance with the laws, rules and regulations applicable to such dealings.

### *D7 Market Fluctuation*

any market fluctuation including, but not limited to, the depreciation in value, the failure to appreciate in value or loss of value in any **investments**.

### *D8 Authorisation*

any **investment** advice provided or services performed, actual or alleged, by the **insured** or any **agent** which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority.

### *D9 Beneficial Interest*

any transaction in which any **insured** or any **agent** had a direct or indirect beneficial interest or ownership as a buyer or seller of **securities**, however this Exclusion does not apply to a direct or indirect beneficial interest or shareholding of less than 10% in any entity.

### *D10 Finance*

any advice provided or services performed, actual or alleged, in respect of any finance or credit, including the actual provision of, by or to:

- (a) any **insured** or any **agent**; or
- (b) any party related to or associated with any **insured** or any **agent**.

### *D11 Approved Products*

- (a) any advice provided or services performed, actual or alleged, by the **insured** or any **agent** in connection with any product, scheme or arrangement that is not included:
  - i. under the **insured's approved product list**; or
  - ii. the **approved products list** of any other party for whom the **insured** or **agent** is an authorised representative.
- (b) However, this Exclusion will not apply where such advice or services are provided or performed by the **insured** or any **agent**

in respect of switching from a non-approved product, scheme or arrangement to a product, scheme or arrangement that is approved, but only where such **loss** arises directly in connection with the subsequent approved product or directly in connection with the switching advice provided by the **insured** or the **agent**.

### *D12 Corporate Advisory Services*

- (a) any advice provided or services performed, actual or alleged, by the **insured** or any **agent** in connection with any merger, acquisition, restructure, tender offer, divestiture, sale, valuation or any activity of similar nature.
- (b) However, this Exclusion will not apply where such advice or services are provided or performed for a privately owned company or a not for profit organisation.

### *D13 Professional Organisations*

any advice provided or services performed, actual or alleged, by on behalf of, the **insured** or any **agent**, by any person who, at the time such advice was provided or services performed:

- (a) was not a member of the Institute of Public Accountants, CPA Australia or Chartered Accountants Australia and New Zealand (or any successor professional organisation); or
- (b) was not a member of the Financial Planning Association of Australia; or
- (c) was prohibited from undertaking such advice or services by reason of their membership status (pursuant to any codes of conduct, professional standards or rules of the applicable professional organisation).

### *D14 Known Circumstances*

- (a) any fact, circumstance, act, error or omission which may give rise to a **claim** or an **inquiry** notified under any previous policy issued by the **insurer** or any other insurer; or
- (b) any fact, circumstance, act, error or omission which may give rise to a **claim** or an **inquiry** declared in the **proposal form** or any previous proposal form or application for insurance submitted to the **insurer** or to any other insurer; or
- (c) any fact, circumstance, act, error or omission which may give rise to a **claim** or an **inquiry** of which any **insured** was aware, or ought reasonably to have been aware, prior to the **policy period**;

### *D15 Known Claims & Inquiries*

any **claim** or **inquiry**:

- (a) that has been notified under any previous policy issued by the **insurer** or any other insurer; or
- (b) declared in the **proposal form** or any previous proposal form or application for insurance submitted to the **insurer** or to any other insurer; or
- (c) known to any **insured** prior to the **policy period**;

### *D16 Retroactive Date*

any act, error or omission committed, or alleged to have been committed, prior to the **retroactive date**;

### *D17 Product-Related Liabilities*

- (a) the replacement of or lack of efficacy of any goods, components or materials manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold or supplied by the **insured** or any **agent**; or
- (b) any defect in any goods, components or materials manufactured, constructed, installed, distributed, treated, maintained, serviced, altered, repaired, sold or supplied by the **insured** or any **agent**;

except where such **loss**, **defence costs**, **inquiry costs**, settlement or payment arises solely and directly from any advice, design or specification provided by the **insured** or any **agent** in the performance of the **professional services**.

### *D18 Directors' & Officers' Liability*

any **insured** acting, or allegedly acting, in the capacity of a director or officer of any corporation or other incorporated body.

### *D19 Obligations to Employees*

bodily or mental injury, sickness, disease, death or emotional distress of any person arising out of, or in the course of, their employment or deemed employment by, or apprenticeship with, the **insured**.

### *D20 Occupier's Liability*

any occupation, ownership, control or management of any real property by the **insured** or any **agent**.

### *D21 Motor Vehicles / Aircraft / Watercraft*

the ownership, use, operation or maintenance of any motor vehicle, aircraft or watercraft of any kind by the **insured** or any **agent**.

### *D22 War / Terrorism*

- (a) war, invasion, acts of foreign enemies or hostilities (whether war is declared or otherwise); or
- (b) insurrection, civil or military uprising, rebellion, revolution, civil war or military or usurped power; or
- (c) terrorism, being any act, or preparation in respect of an act, of any person or group of people, including but not limited to the use of or threat of force or violence, where the purpose of such act by its nature or context is to further a political, religious, ideological, ethnic or similar aim and/ or to intimidate or influence a government (whether lawfully constituted or otherwise), the public or any section of the public; or
- (d) the confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority; or
- (e) the imposition of any economic, trade or political sanctions (whether lawful or otherwise) by any sovereign power; or
- (f) the use of military or para-military force or personnel or warlike action taken by any government, public or local authority to control, prevent, suppress, defend against, retaliate or to otherwise respond to any act described in paragraphs (a) to (e) of this Exclusion.

### *D23 Nuclear Risks*

- (a) the use, manufacture, storage, handling or transport of any nuclear fuel (including radioactive raw material) and radioactive

waste; or

- (b) the use or operation of any nuclear reactor, particle accelerator, particle generator or similar device; or
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, waste or other radioactive material whether occurring naturally or otherwise; or
- (d) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (e) the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon, nuclear explosive device or nuclear component thereof;

except where such **loss, defence costs, inquiry costs**, settlement or payment arises from the use by the **insured** or any **agent** of radioisotopes, radium or radium compounds away from the place where such are made or produced and such use is exclusively incidental to ordinary industrial, educational, medical or research activities in the performance of the **professional services**.

### *D24 Asbestos*

asbestos or contributed to or aggravated by asbestos in any form or quantity.

### *D25 Licensing*

any activity, actual or alleged, by or on behalf of any **insured** or any **agent** for which such **insured** or **agent** did not hold at the time such activity was conducted:

- (a) an appropriate **Australian Financial Services Licence**, limited or otherwise; or
- (b) proper and valid authority from another Australian Financial Services Licensee; or
- (c) is not otherwise properly licensed, registered or authorised in accordance with any relevant legislation or regulation.

### *D26 Intellectual Property Rights*

- (a) any intentional infringement of **intellectual property rights**; or
- (b) any infringement of **intellectual property rights** arising from any promotional, marketing or advertising material circulated, broadcast or utilised in any way by the **insured** or any **agent**;
- (c) any breach or infringement of any patent, actual or alleged, by the insured or any agent, in respect of legal or regulatory proceedings:
  - i. brought in a court of law or before a judicial, administrative, arbitral, investigative or disciplinary panel of any description in; or
  - ii. directly or indirectly arising out of, based upon, attributable to or in consequence of the enforcement of any judgment, order or award obtained within or pursuant to the laws of, the United State of America, Canada, their territories, protectorates or dependencies.

## *D27 Anti-Competitive Conduct*

any contravention of the provisions of Part IV, Part XI B and Schedule 1 of the Competition and Consumer Act 2010 (Cth) or any **comparable legislation**.

## *D28 Related Parties*

any **claim** which is brought by or initiated by or on behalf of:

- (a) any **insured** or **agent**; or
- (b) any person who is a spouse, domestic partner, parent, child or sibling of any **insured** or **agent**, or parent of a spouse, domestic partner or companion of any **insured** or **agent**; or
- (c) any person or entity with a financial or managerial interest in any **insured** or **agent**; or
- (d) any entity in which any **insured** or **agent** has a financial or managerial interest; or
- (e) any trustee of a trust in which any **insured** or **agent** or any party related to or associated with any **insured** or any **agent**, are a beneficiary.

This Exclusion, however, does not apply to any **loss, defence costs**, settlement or any other payment arising from any **claim** made by an independent third party without the co-operation or solicitation of any **insured**.

## *D29 Jurisdictional Limits*

any **claim** or **inquiry**;

- (a) brought in a court of law or before a judicial, administrative, arbitral, investigative or disciplinary panel of any description in;  
or
- (b) directly or indirectly arising out of, based upon, attributable to or in consequence of the enforcement of any judgement, order or award obtained within or pursuant to the laws of;

the United States of America, Canada, their territories, protectorates or dependencies.

## *D30 Waived or Limited Rights*

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



# GENERAL CONDITIONS

## *E1 Limit of Indemnity*

- (a) The total liability of the **insurer** under this **policy** for all **loss, inquiry costs**, settlements or any other payments that may be the subject of indemnity under this **policy** (including any Automatic or Optional Extension unless otherwise specified) in respect of any one **claim** or **inquiry** (as applicable) and in the aggregate for all payments will in no event exceed the **limit of indemnity** or the applicable Sub-Limit specified in any Extension or in the **schedule**.
- (b) The liability of the **insurer** under this **policy** for any **defence costs** will be in addition to the **limit of indemnity** or any Sub-Limit specified in any Extension or in the **schedule**. The total liability of the **insurer** under this **policy** for all **defence costs** will in no event exceed the **limit of indemnity**.
- (c) The **limit of indemnity** is inclusive of any Sub-Limit specified in any Extension or in the **schedule**.
- (d) In the event that the amount required or to be paid in settlement of any **claim** or **inquiry** exceeds the **limit of indemnity** or any applicable Sub-Limit available under the **policy**, the **insurer's** liability of **defence costs** (subject to clause E1(b)) or **inquiry costs** will be limited to such proportion as the amount of the **limit of indemnity** available in respect of such **claim** or **inquiry** bears to the amount required or to be paid in settlement.

## *E2 Retention*

- (a) The **insurer** will only be liable to indemnify the **insured** for such amount of any **loss, defence costs, inquiry costs**, settlement or any other payment that may be the subject of indemnity under this **policy** (including any Automatic Extension or Optional Extension), and/ or pay any **defence costs** or **inquiry costs**, in respect of any one **claim** or **inquiry** which is in excess of the **retention**.
- (b) The **retention** is to be borne by the **insured** and will remain uninsured.

## *E3 Notification*

- (a) The **insured** must notify the **insurer** in writing of any **claim** made against the **insured**, or any notice of an **inquiry** received by the **insured**, as soon as practicable during the **policy period**.
- (b) All notifications and other correspondence in respect of any **claim** or **inquiry** should be forwarded to the Claims Department at the **insurer's** address specified in the **schedule**.

## *E4 Conduct of Defence*

- (a) The **insured** must not settle any **claim**, incur any **defence costs**, or **inquiry costs**, make any admission, offer or payment or otherwise assume any contractual obligation or waive any right with respect to any **claim, inquiry**, or any other matter which may be the subject of indemnity under this **policy**, without the prior written consent of the **insurer**. The **insurer** will not be liable for any **loss, defence costs, inquiry costs**, settlement or other payment, attributable to or in consequence of any admission, offer, assumed obligation or waiver to which the insurer has not given prior written consent.
- (b) The **insurer** will be entitled, at its absolute discretion, to conduct at any time:

- i. any investigation the **insurer** considers necessary into any **claim, inquiry** or any other matter which may be the subject of indemnity under this **policy**; or
- ii. in the name of the **insured**, the defence or settlement of any **claim**; or
- iii. the representation of the **insured** at any **inquiry**.

Any amount incurred by the **insurer** on behalf of the **insured** will be deemed to be part of any **loss, defence costs** or **inquiry costs** (as applicable) in respect of such **claim** or **inquiry**.

- (c) The **insured** must use due diligence and do and concur in all things reasonably practicable to avoid or diminish any **loss, defence costs**, and **inquiry costs**
- (d) The **insured** must provide to the **insurer** all relevant information, evidence and documentation, and must provide assistance and co-operation to the **insurer** as they may reasonably require to enable the **insurer** to investigate and to defend any **claim** or any other matter which may be the subject of indemnity under this **policy**, to provide representation at any **inquiry** and/or to enable the **insurer** to determine its liability under this **policy**.
- (e) The **insured** must meet their obligations under clause E4 in a timely fashion and will bear their own costs incurred in complying with the same.
- (f) Any person seeking indemnity under this **policy** will be subject to and must comply with all duties and obligations of an **insured** under this **policy**.

### *E5 Insured's Rights in Respect of Defence & Settlement*

- (a) The **insurer** will not require the **insured** to contest any **claim** unless a Senior Counsel (to be mutually agreed by the **insurer** and the **insured**) advises in writing that such **claim** should be contested. In formulating such advice, Senior Counsel will take into consideration the economics of the matter (including potential **loss, defence costs**, settlement and any other payment) and the prospects of the **insured** successfully defending the **claim**. The cost of such Senior Counsel's opinion will be regarded as part of the **defence costs**.
- (b) In the event that the **insurer** recommends settlement in respect of any **claim** and the **insured** does not agree that such **claim** should be settled, the **insured** may elect to contest such **claim** provided always that the liability of the **insurer** for all **loss, defence costs**, settlement or other payment in connection with such **claim** will not exceed the amount for which the **claim** could have been so settled.

### *E6 Allocation*

- (a) In the event of a **claim** where only a part of the **loss** and related **defence costs** are the subject of indemnity under this **policy** the **insured** and the **insurer** will use their best endeavours to agree upon a reasonable allocation of **loss, defence costs**, settlement, or any other payment to be the amount of indemnity provided by this **policy**.
- (b) In the event that an agreement cannot be reached the expert opinion of a Senior Counsel will be sought to determine a reasonable allocation of **loss, defence costs**, settlement, or any other payment to be the amount of indemnity provided by this **policy**.
- (c) Senior Counsel to be engaged in accordance with clause E6(b) above will be subject to agreement between the **insured**

and the **insurer**. In the absence of an agreement, Senior Counsel will be appointed by the current President of the Law Society in the State or Territory in which this **policy** is issued.

- (d) Until such a determination has been made, the **insurer** may, at its absolute discretion and without any admissions in relation to indemnity, indemnify the **insured** under this **policy** as the **insurer** considers reasonable.
- (e) Senior Counsel will not be engaged in the capacity as an arbitrator and the cost of such engagement will be part of the **defence costs**.

### ***E7 Subrogation***

- (a) If indemnity is granted under this **policy** in respect of any **loss, defence costs, inquiry costs**, settlement or any other payment, the **insurer** will 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.
- (b) 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 E7(a) above.

### ***E8 Other Insurance***

- (a) This **policy** will apply only in excess over:
  - i. any other insurance specified in the **proposal form**;
  - ii. any other specific project insurance declared to the **insurer** under clause E8(b) below; and any renewal or substitute for such insurances.
- (b) The **insured** must notify the **insurer** of any other specific project insurance to which it is a party, an **insured** or a beneficiary, within 30 days of the taking out of such insurance.
- (c) In the event of a **claim** or **inquiry** the **insured** must promptly notify the **insurer** of any other insurance under which any **insured** may be entitled to any indemnity or other benefit in respect of any **claim, inquiry** or any other matter which may be the subject of indemnity under this **policy**. The **insured** must provide to the **insurer** all information in respect of such insurance as the **insurer** may reasonably request including the policy number and identity of the insurer.

### ***E9 Notice & Authority***

The **named insured** first specified in the applicable section of the **schedule** will act on behalf of all parties comprising the **insured** with respect to:

- (a) the receipt and acknowledgement of all notices required by law; and
- (b) the giving and receiving of any notice under this **policy**; and
- (c) the payment of premiums and other charges that may become due under this **policy**; and
- (d) the receipt and acceptance of any endorsements issued to form a part of this **policy**.

## *E10 Assignment*

This **policy** and any rights hereunder cannot be assigned without the prior written consent of the **insurer**.

## *E11 Governing Law*

Any interpretation of this **policy** relating to its construction, validity or operation will be made in accordance with the laws of the Commonwealth of Australia and the state or territory in which it is issued and the parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.

## *E12 Plurals & Titles*

- (a) The titles of the clauses and paragraphs in this **policy** are for convenience only and do not lend any meaning to this contract except for reference purposes.
- (b) The singular terms used in this **policy** include the plural and vice versa, except where the context requires otherwise.
- (c) In this **policy** words in bold (except for titles of clauses and paragraphs) have special meaning and are defined.

## *E13 Cancellation/ Termination*

- (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** subject to there being no losses or **claims** notified during the current **policy period**.

## *E14 Currency*

All premiums, limits, retentions and other amounts under this **policy** are expressed and payable in Australian currency unless otherwise specified in the **schedule**.

## *E15 Material Change to Risk*

The **named insured** first specified in the **schedule** must immediately notify the **insurer** of any material change in the risk that is the subject of this **policy** or a change in the legal or operational status of any **named insured** during the **policy period**, including but not limited to:

- (a) a **change of control**;
- (b) the establishment of a subsidiary company or branch office, notwithstanding clause B13 (New Subsidiaries Extension) of this **policy**;

- (c) the appointment of a trustee in bankruptcy of any **named insured** or **principal**;
- (d) any material change in the nature of the professional activities of any **insured** as represented in the **proposal form**;
- (e) 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** will be entitled to cancel this **policy** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth). The **insurer** and the **insured** may, however, negotiate terms for the continuation of the **policy**.

In the event of a **change of control** and where the insurer has agreed in writing not to cancel this **policy**, the **insurer** will not be liable to indemnify the **insured** for any **loss**, settlement, or other payment, pay any **defence costs** or **inquiry costs** directly or indirectly arising out of, based upon, attributable to or in consequence of the performance of any **professional services** by or on behalf of the **named insured** after the effective date of the **change of control**.

The **insurer** will 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.

### *E16 Validity*

This **policy** is not valid unless the **schedule** is signed by an authorised representative of the **insurer**.

### *E17 Treatment of Goods & Services Tax*

- (a) The liability of the **insurer** to the **insured** in respect of any indemnity which may be available under this **policy** will be calculated taking into account any input tax credit to which the **insured** is entitled for any relevant acquisition or would have been entitled had the **insured** made any such relevant acquisition.
- (b) The **retention** will apply net of any entitlement the **insured** may have to an input tax credit.

### *E18 Severability*

Where the **insured** comprises of more than one party any;

- (a) failure by any such party to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth); or
- (b) misrepresentation by any such party to the **insurer**,

will not prejudice the rights of any other party comprising the **insured** under this **policy** provided that such other **insured**;

- i. had no knowledge of, or did not consent to or condone, such failure or misrepresentation; and
- ii. notified the **insurer** of such failure or misrepresentation as soon as reasonably practicable after discovery by them of such failure or misrepresentation; and
- iii. takes all action reasonably necessary to remedy such failure or misrepresentation and co-operates with the **insurer** to mitigate any prejudice suffered by the **insurer** by reason of such failure or misrepresentation.

However, any such failure or misrepresentation by any past or present **principal** of any **named insured** will be imputed to such **named insured**.

## *E19 Breach of Conditions*

Any breach of any part of Section E (General Conditions) of this **policy** by any **insured** will not prejudice the rights of any other **insured** under this **policy** provided that such other **insured**;

- (a) had no knowledge of, or did not consent to or condone, such breach; and
- (b) notified the **insurer** of such breach as soon as reasonably practicable after discovery by the **insured** of such breach; and
- (c) takes all action reasonably necessary to remedy such breach and co-operates with the **insurer** to mitigate any prejudice suffered by the **insurer** by reason of such breach.

## *E20 Consent*

- (a) The **insurer** will not be obliged to pay any **defence costs, inquiry costs** or any fees, costs and expenses that are the subject of Automatic Extensions B1, B2, B4 or B7 of, or in any endorsement attaching to and forming part of, this **policy** unless the **insurer** has provided prior written consent to the **defence costs, inquiry costs** or any other applicable fees, costs and expenses being incurred.
- (b) The **insurer** will not be obliged to make any payment in connection with any liability admitted by the **insured** nor any settlement agreed by the **insured** unless the **insurer** has provided prior written consent to the liability being admitted or settlement being agreed.
- (c) The **insurer** will not unreasonably withhold or delay consent that may be required under any clause of this **policy** provided that the **insured** complies with their obligations under clause E4 (Conduct of Defence General Condition) of this **policy**.

## *E21 Sanctions*

This **policy** will not be deemed to provide any insurance for any **loss, inquiry costs** or any other amount and the **insurer** will not be liable to pay any **loss, inquiry costs** or any other payment under this **policy**, to the extent that the provision of such insurance or payment of such **loss, inquiry costs** or any other payment would expose the **insurer** 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 or United States of America.

# DEFINITIONS

- F1** “**agent**” means any consultant, contractor (or any sub-consultant or sub-contractor engaged by such consultant or contractor), **authorised representative** or other agent of any **named insured**.
- F2** “**approved product list**” means the list of financial product which the **insured** will recommend, or allow its **authorised representatives** to recommend, or offer to current or prospective clients of the **insured** or its authorised **representatives**.
- F3** “**Australian Financial Services Licence**” means an Australian Financial Services Licence issued by the Australian Securities and Investments Commission in accordance with section 913B of the Corporations Act 2001 (Cth)
- F4** “**authorised representative**” means a person authorised in accordance with section 916A or 916B of the Corporations Act 2001 (Cth) to provide financial services on behalf of the **insured** who must, themselves be a licensee in accordance with section 913B of the Corporations Act 2001 (Cth).
- F5** “**award**” means
- (a) any payment of a compensatory nature awarded under any adjudication or arbitration process or procedure which is binding on the **insured** pursuant to the **terms of reference** of an **external complaints resolution scheme** including any costs that are awarded against the **insured**; and
- (b) any payment of a compensatory nature agreed to by the **insured** with the prior written consent of the **insurer** under any conciliation process or procedure pursuant to the **terms of reference** of an **external complaints resolution scheme**.
- F6** “**change of control**” means when:
- (a) a **named insured** ceases to exist or operate; or
- (b) a **named insured** consolidates with, merges into or is acquired by any other business, partnership, person, entity or group of persons and/ or entities acting in concert such that the:
- i. majority of the issued share capital of the **named insured** is acquired by any such party; or
- ii. majority of the voting rights of the **named insured** are subsequently controlled by such party; or
- iii. majority of directors of a **named insured** are subsequently appointed by such party; or
- iv. **named insured** becomes a subsidiary of any such party by virtue of any law; or
- (c) a **named insured** is placed into liquidation (provisional or otherwise), receivership or administration; or
- (d) a **subsidiary** pursuant to clause B13 (New Subsidiaries Automatic Extension) of this **policy** ceases to be a subsidiary of the **named insured**.
- F7** “**civil liability**” means legal liability arising from any civil cause of action.
- F8** “**claim**” means any legal proceedings or written demand against an **insured** for compensation.

Where more than one **claim** arises from, is based on, is attributable to, or is in consequence of a single act, error or omission, or a series of acts, errors or omissions consequent upon or attributable to one source or originating cause, all such

**claims** will jointly constitute a single **claim** for the purposes of this **policy**.

**F9** “**comparable legislation**” means

- (a) any provision of any predecessor or successor legislation with materially similar effect; or
- (b) any provision of any legislation applicable in another jurisdiction within the Commonwealth of Australia or New Zealand with materially similar effect; or
- (c) any regulatory guide issued by the Australian Securities & Investments Commission;

as amended from time to time.

**F10** “**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.

**F11** “**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.

**F12** “**currency**” means any money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

**F13** “**cyber attack**” means a malicious attack that causes a disruption to the **computer system** or enables unauthorised access to the **computer system**.

**F14** “**defence costs**” means any reasonable and necessary fees, costs and expenses resulting solely from the investigation, adjustment or defence of a **claim** (including the cost of any related appeal proceedings) in respect of any **loss** that is the subject of indemnity under this **policy** but will not include the travel, accommodation, salary or other employment related costs (including remuneration of any **principal**) of any **insured**.

**F15** “**documents**” means deeds, wills, agreements, maps, plans, books, letters, certificates, forms and any other written or printed documents of any nature whatsoever including any electronic or computer record or reproduction of such physical documents but will not include;

- (a) any shares, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument; or
- (b) any electronically stored data; or
- (c) any software or computer programme.

**F16** “**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.
- F17** “**employee**” means any natural person, other than a **principal**, employed under a contract of service or apprenticeship with the **named insured** and includes any part-time, casual, trainee or work experience personnel.
- F18** “**external complaints resolution scheme**” means an external complaints resolution scheme approved by Australia Securities & Investments Commission pursuant to Australian Securities & Investments Commission Regulatory Guide 139 of which the **insured** is a member at the relevant time.
- F19** “**inquiry**” means any civil, criminal, administrative or disciplinary inquiry, investigation or hearing held by any official or legally constituted body.
- F20** “**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 will not include the travel, accommodation, salary or other employment related costs (including remuneration of any **principal**) of any **insured**.
- F21** “**insured**” means
- (a) the **named insured**;
  - (b) any past, present or future **principal** of any **named insured**;
  - (c) any past, present or future employee of any **named insured**.
- F22** “**insurer**” means the Insurer specified in the applicable section of the **schedule**.
- F23** “**intellectual property rights**” means any copyright, patent, registered design, trademark, circuit layout rights and any other proprietary technology or methodology.
- F24** “**investments**” means any **securities**, commodities, currencies, options contract, futures contract or any other financial interest in a business, an enterprise or property of any kind.
- F25** “**limit of indemnity**” means the Limit of Indemnity specified in the applicable section of the **schedule**.
- F26** “**Limited Australian Financial Services Licence**” means a Limited Australian Financial Services Licence issued by the Australian Securities and Investments Commission in accordance with Part 7.6 of the Corporations Act 2001 (Cth) with respect to any advice provided or services performed by the **insured** or any **agent** in respect of the following financial products:
- (a) superannuation; and
  - (b) **securities**; and
  - (c) simple managed investment schemes, as defined in the Corporations Regulations 2001 (Cth); and
  - (d) general and life insurance products; and
  - (e) basic deposit products.
- F27** “**loss**” means compensatory damages, **award** and / or claimant’s costs (whether awarded or by settlement with the prior written consent of the **insurer**), but will 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**.

**F28** “**named insured**” means the legal entities specified in the applicable section of the **schedule**.

**F29** “**policy**” means this wording, any endorsements to the wording and the **schedule**.

**F30** “**policy period**” means the period of time from the inception date to the expiration date specified in the applicable section of the **schedule**.

**F31** “**previous business**” means a corporation, partnership or natural person (previously operating as a sole practitioner) specified by endorsement to this **policy**.

**F32** “**principal**” means any natural person who:

- (a) in the case of a partnership, is appointed as a partner in such partnership; or
- (b) in the case of a corporation, is appointed as a director of such corporation.

**F33** “**professional services**” means the performance capacity of any of the following services by the **insured** or any **agent**:

- (a) accounting (including forensic accounting);
- (b) accounts preparation and bookkeeping;
- (c) taxation;
- (d) company secretarial activities;
- (e) self-managed superannuation fund administration;
- (f) management consulting;
- (g) corporate advisory services (including business valuations);
- (h) accounting software consulting;
- (i) administration, receivership, insolvency, provisional liquidation and liquidation;
- (j) executorship;
- (k) auditing;
- (l) a trustee in bankruptcy;
- (m) a trustee; and
- (n) any other professional services agreed to by either the **insurer** in writing and included by endorsement to this **policy**.

**F34** “**proposal form**” means the proposal form or application for insurance dated as specified in the applicable section of the **schedule** and:

- (a) any additional documentation attached to such proposal form or application; and
- (b) any documentation or other information provided to the **insurer** as part of any submission made by or on behalf of the **insured** in respect of this insurance.

**F35** “**retention**” means the Retention specified in the applicable section of the **schedule**.

**F36** “**retroactive date**” means the Retroactive Date specified in the applicable section of the **schedule**.

**F37** “**schedule**” means the schedule attaching to and forming part of this **policy**.

**F38** “**securities**” has the same meaning as specified in Section 92(1) of the Corporations Act 2001 (Cth).

**F39** “**subsidiary**” means a subsidiary of the **named insured** and as defined in the Corporations Act 2001 (Cth).

**F40** “**technology expenses**” means the reasonable and necessary fees, costs and expenses directly incurred by the **insured** to restore the provision of the **professional services** following a **cyber attack**.

**F41** “**terms of reference**” has the same meaning as that specified in Australian Securities & Investments Commission Regulatory Guide 139.



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