

**Real Estate Agents**  
*Professional Indemnity Insurance*

Policy Wording



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# POLICY SCHEDULE

<b>Policyholder:</b>		
<b>Policy Number:</b>		
<b>Policyholder's main address:</b>		
<b>Policy Period:</b>	From:	To:
	4pm at the <b>Policyholder's</b> main address.	
<b>Retroactive Date:</b>	XX/XX/XXXXX excluding known <b>Claims, Inquiries</b> , or circumstances	
<b>Continuity Date:</b>		
<b>Professional Services:</b>		
<b>Limit of Liability (any one Claim):</b>	AUD\$	
<b>Aggregate Limit (for the Policy Period):</b>	AUD\$	
<b>Retention:</b>	AUD\$	
<b>Sublimits of Liability (Any one Claim and in the aggregate)</b>		
<b>Advancement of Defence Costs</b>	AUD\$1,000,000	
<b>Court Attendance Costs:</b>	AUD\$500 per day for <b>Executive Officer</b> AUD\$250 per day for all other <b>Employees</b>	
<b>Inquiry Costs and Expenses:</b>	AUD\$500,000	
<b>Penalties:</b>	AUD\$250,000	
<b>Public Relations Expenses:</b>	AUD\$100,000	
<b>Optional Extension Sublimit</b>		
<b>Cyber Mitigation Costs:</b>	AUD\$250,000 / Not Included	
<b>Defence Costs in Addition:</b>	AUD\$X,000,000 / Not Included	
<b>Mitigation Costs:</b>	10% of the <b>Limit of Liability</b> / Not Included	
<b>Insurer:</b>	Probitas 1492 Syndicate at Lloyd's of London	
<b>Claim, Inquiry</b> , or circumstance notifications:	Probitas 1492, C/-Probitas (Pacific) Pty Limited Level 13, 333 George Street, Sydney, NSW, 2000 Email: australiaclaims@probitas1492.com Phone: 1300 01 1492	
<b>Premium:</b>	As agreed.	
Signed for and on behalf of the <b>Insurer:</b>		
Date of <b>Policy</b> issuance:		

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# IMPORTANT NOTICES

## About Probitas Pacific

Probitas 1492 (Pacific) Pty Ltd (**Probitas Pacific**) ABN 82 663 993 244 AFSL 545082 has an authority from the **Insurer** to arrange, enter into, bind and administer this **policy** (including handling and settling claims) on behalf of the **Insurer** as if it were the **Insurer**. Probitas Pacific acts as an agent for the **Insurer** and not for the **Insured** (also referred to in these Important Notices as “you” and “your”).

## Your duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us of anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary, replace, or reinstate an insurance contract. If you have made a statement and this changes before the end of the above relevant time, you must tell us about this change before the time ends.

You do not need to tell us anything that:

- reduces the risk we insure you for;
- is of common knowledge;
- we know or should know as an insurer; or
- we waive your duty to tell us about.

## If You do not tell Us something

If you do not meet the duty, to the extent permitted by law, we may reject or not fully pay your claim. We may also, or as an alternative, cancel your insurance or if the failure to meet the duty was fraudulent, treat it as if it never existed.

## Claims made and notified

This insurance is issued on a ‘claims made and notified’ basis. This means that the policy covers **Claims** that are first made against you and notified to us during the **Policy Period**.

Where your **Policy** has an extended or additional reporting period, subject to the terms of the **Policy**, you may have:

- an additional period to tell us about **Claims** first made against you during the **Policy Period**; and/or
- cover for **Claims** first made against you during the extended reporting period and which you tell us about during the extended reporting period – provided the **Claim** is based on an act, error, or omission alleged to have been committed prior to the expiry of the **Policy Period**.

The **Policy** doesn’t cover facts or circumstances of which you first became aware prior to the **Policy Period**, and which you knew or ought reasonably to have known had the potential to give rise to a **Claim**

against you, subject to any ‘Continuous Cover’ extension which may, subject to its terms, provide an exception to this.

If a **Retroactive Date** is applied or shown on the **Policy Schedule**, the **Policy** also doesn’t cover **Claims** arising directly or indirectly from any acts, errors, omissions, or events actually or allegedly occurring before that date.

The above is only a high-level overview. You must refer to the **Policy** for full terms and conditions that apply to you.

## Written notification of facts

By reason only of the operation of section 40(3) of the Insurance Contracts Act 1984 (and not as a term of the **Policy**), if you give us notice in writing of facts that might give rise to a **Claim** against you as soon as reasonable after you became aware of those facts but before the insurance cover provided by the **Policy** expired, we are not relieved of liability under the policy in respect of the claim, when made, by reason only that it was made after the expiration of the **Policy Period**. Any such rights arise under the legislation only and not the **Policy** terms.

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (**Code**), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry. Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au). The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers compliance with the Code. For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>.

## Complaints and dispute resolution process

### Internal Dispute Resolution process

We view seriously any complaint made about our products or services and will deal with it promptly and fairly. If you have a complaint, please first try to resolve it by contacting the relevant member of our staff. If the matter is still not resolved, please then contact our Internal Disputes Resolution Officer using the contact details on the back cover of this document. They will seek to resolve the matter in accordance with our Dispute Resolution procedures.

If we cannot resolve your complaint to your satisfaction, we will (or you may) escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team:

Lloyd's Australia Limited  
Level 16, Suite 1603, 1 Macquarie Place,  
Sydney, NSW 2000.  
Telephone: (02) 8298 0783  
Email: idraustralia@lloyds.com

If You are not satisfied with the final decision, you may wish to contact the Australian Financial Complaints Authority (AFCA) details below.

### **Australian Financial Complaints Authority (AFCA)**

AFCA is a free independent external disputes resolution service provided to customers to review and resolve complaints subject to them falling within its rules. You may refer a complaint to the AFCA at any time. Time limits apply. For example, AFCA may not consider a complaint referred to AFCA more than 2 years after we provide a final IDR response to the Insured, unless AFCA considers special circumstances apply. If in doubt, contact AFCA.

For details You can visit their website at [www.afca.org.au](http://www.afca.org.au) or contact them:

Australian Financial Complaints Authority  
PO Box 3  
Melbourne, VIC, 3001  
Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)

If AFCA tells you that under its Rules it cannot assist or consider the dispute, then you can seek independent legal advice. You can also access any other external dispute resolution (including in some cases the Financial Ombudsman Service (UK)) or other options that may be available to you.

For more information on how we handle complaints request a copy of our procedures from us.

### **Privacy Statement**

In this Statement:

- “We”, “Our” and “Us” means Probitas 1492 (Pacific) Pty Ltd and the Lloyd’s Underwriters we act on behalf of.
- “You” and “Your” refers to anyone using Our services or providing Personal Information.

We are committed to protecting Your privacy in accordance with the requirements of the Privacy Act 1988 (Cth) (“**Privacy Act**”) and the Australian Privacy Principles (**APPs**), as amended, replaced or superseded from time-to-time.

This Statement is a summary of Our Privacy Policy and provides an overview of how We collect, hold, use and disclose Personal Information. Our Privacy Policy may change from time to time and where this occurs, the updated Privacy Policy will be posted to Our website at: <https://probitas1492.com/privacy-policy-probitas-pacific/>

**Personal Information** is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not;
- whether the information or opinion is recorded in a material form or not.

It includes Sensitive Information as defined in the Privacy Act which includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

### **Why We collect, hold, use and disclose Your Personal Information**

The primary purpose for collecting, holding, using and disclosing Your Personal Information is to enable Us to provide Our insurance services to You or where reasonably necessary for or directly related to one or more of our insurance functions and activities (including but not limited to deciding whether to issue a policy, determine the terms and conditions of the policy, compiling data to help develop and identify other products and services that may interest clients, and handling claims). Sometimes We may use Your Personal Information for Our marketing campaigns and research, in relation to new products, services or information that may be of interest to You.

If You do not provide the personal information requested and/or do not provide Us with Your consent to collecting, holding, using or disclosing Your Personal Information as set out in this Privacy Statement, We may not be able to provide our insurance services (for example, Your insurance application may not be accepted) or You may be in breach of Your duty regarding disclosure to insurers.

### **How We obtain Your Personal Information**

We collect Your Personal Information at various points including, but not limited to, when You are applying for, changing, or renewing an insurance policy with Us or when We are processing a claim or handling any complaint. Personal Information is usually obtained directly from You, but sometimes via a third party such as an insurance intermediary or your broker or Your employer (e.g. in the case of a group insurance policy). Please refer to Our Privacy Policy for further details.

When information is provided to Us via a third party We use that information on the basis that You have consented or would reasonably expect Us to collect Your Personal Information in this way. We take



reasonable steps to ensure that You have been made aware of how We handle Your Personal Information.

### **When do We disclose Your Personal Information?**

We may disclose the information We collect to third parties where it is reasonably necessary for, or directly related to, the services we provide to You.

This can include the policyholder (where the insured person is not the policyholder, i.e. group policies) to joint policyholders, our related companies (and persons they rely on to provide their services), our agents or contractors, insurers, their agents and others they rely on to provide their services and products (e.g. reinsurers), premium funders, other insurance intermediaries, insurance reference bureaus, loss adjusters or assessors, medical service providers, credit agencies, lawyers and accountants, prospective purchasers of our business and our alliance and other business partners. They are prohibited from using Your Personal Information except for the specific purpose for which We supply it to them and We take such steps as are reasonable to ensure that they are aware of the provisions of Our Privacy Policy in relation to Your Personal Information.

These third parties which may be located outside of Australia (such as in the UK). These entities and their locations may change from time-to-time. Please contact Us, if You would like a full list of the countries in which these third parties are located. When we send information overseas, in some cases we may not be able to take reasonable steps to ensure that overseas providers do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire our services and products you agree that you cannot seek redress under the Act or against us (to the extent permitted by law) and may not be able to seek redress overseas. If you do not agree to the transfer of your personal information outside Australia, please contact us.

### **When You give Us Personal Information about other individuals**

In such a case We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant Personal Information to Us.

### **Your decision to provide Your Personal Information**

In dealing with Us, You agree to Us collecting, using and disclosing Your Personal Information, which will be collected, stored, used and disclosed by Us as set out in this Privacy Statement and Our Privacy Policy.

### **Access to and correction of Your Personal Information**

Please contact Us if You would like:

- a copy of Our Privacy Policy, or
- to cease to receive marketing offers from Us or persons with whom We have an association.
- to seek access to, update or correct Your Personal Information held by Us.

### **How to Make a Complaint**

If You have a complaint or would like more information about how We manage Your Personal Information, please review Our Privacy Policy for more details, or contact Us. We will notify You as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

### **Governing law and summons notice or process**

We agree that:

- if a dispute arises under the policy, the **Policy** will be subject to Australian law and practice and we will submit to the jurisdiction of any competent Court in the Commonwealth of Australia within the State or Territory in which the policy was issued;
- any summons notice or process to be served upon us may be served upon:

Lloyd's Underwriters' General Representative in Australia, Suite 1603, Level 16, 1 Macquarie Place, Sydney NSW 2000,

who has authority to accept service on our behalf;

if a suit is instituted against any of us, all Lloyd's Underwriters participating in the **Policy** will abide by the final decision of such Court or any competent Appellate Court.

### **Our rights are subject to applicable law**

Where we may refuse to pay or reduce the amount we pay under a **Claim** under the **Policy**, we may only do so to the extent permitted by applicable law. Any rights we have under are subject to the operation of the Insurance Contracts Act 1984 (Cth) and any other relevant statute or legislation. You should seek appropriate advice regarding your rights.

## POLICY DETAILS

### AGREEMENT WITH THE INSURED

This **Policy** is a legal contract between the **Policyholder** and the **Insurer** and is made up of this **Policy Wording** and the **Policy Schedule**. The Important Notices do not form part of the **Policy**. The **Policyholder** has agreed to pay the **Insurer** the **Premium** and the **Insured** may access the benefit of cover under the **Policy**, provided that the **Insured** meets the eligibility criteria at the time.

### RETENTION

The **Insurer** shall only pay the amount of any **Loss** which is in excess of the **Retention**, unless specified otherwise under the relevant Extension or Optional Extension. The **Retention** is to be borne by the **Insured** and shall remain uninsured.

### HOW MUCH THE INSURER WILL PAY

The most the **Insurer** will pay in respect of any single **Claim, Inquiry** or other **Loss** covered under the **Policy** is the **Limit of Liability** or any applicable **Sublimit** stated in the **Policy Schedule**. The **Limit of Liability** is inclusive of **Defence Costs. Sublimits** are part of, and not in addition to, the **Limit of Liability** or the **Aggregate Limit**. The most the **Insurer** will pay in the **Policy Period** is the **Aggregate Limit**. The inclusion of more than one **Insured** under this **Policy** does not operate to increase the total amount payable by the **Insurer** under this **Policy**.

## DEFINITIONS

Some key words and terms used in this **Policy** have a special meaning. Wherever the following words or terms are used in the **Policy**, they mean what is set out below:

Word or term	Meaning
<b>Aggregate Limit</b>	the amount shown as the <b>Aggregate Limit</b> in the <b>Policy Schedule</b> .
<b>Bodily Injury</b>	physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any natural person.
<b>Claim</b>	the receipt of any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice, or written demand, for compensation.
<b>Claim Prevention Costs and Expenses</b>	<p>the reasonable and necessary direct costs and expenses incurred by the <b>Insured</b> for the rectification or mitigation of a potential <b>Claim</b> which the <b>Insured</b> has first become aware of during the <b>Policy Period</b>, following the notification of such potential <b>Claim</b> to the <b>Insurer</b> during the <b>Policy Period</b>, and which costs and expenses the <b>Insurer</b> consents to in writing and which the <b>Insurer</b> determines to be directly attributable to and reasonably incurred in the prevention of a <b>Claim</b> which, if made, would be covered by this <b>Policy</b>.</p> <p><b>Claim Prevention Costs and Expenses</b> does not include:</p> <ol style="list-style-type: none"><li>an <b>Insured's</b> loss of opportunity, revenue or profits;</li><li>overheads, staff remuneration or management time of any <b>Insured</b>;</li><li>damages, compensation or other payments made, or consideration given, to customers, clients or potential claimants;</li><li>any amount once a <b>Claim</b> is made;</li><li>any amount incurred before notification to the <b>Insurer</b> of the potential <b>Claim</b>;</li><li>any amounts incurred which result in an increased quality from that specified in the relevant contract; or</li><li>any other amounts which fall within the definition of <b>Loss</b>.</li></ol>



Word or term	Meaning
<b>Computer System</b>	<p>any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, which is:</p> <ul style="list-style-type: none"> <li>a) owned or operated by the <b>Insured</b>, or</li> <li>b) operated by a <b>Third Party</b> pursuant to a written contract with the <b>Insured</b> in order to provide hosted computer application services or processing, storing or hosting of the <b>Insured's</b> electronic data.</li> </ul>
<b>Continuity Date</b>	the continuity date specified in the <b>Policy Schedule</b> .
<b>Cyber Incident</b>	<ul style="list-style-type: none"> <li>a) any error or omission involving access to, processing of, use of or operation of any <b>Computer System</b>; or</li> <li>b) any partial or total unavailability or failure to access, process, use or operate any <b>Computer System</b>.</li> </ul>
<b>Cyber Operation</b>	any hostile act or series or related hostile acts at the direction, or under the control of a sovereign state to alter, disrupt, deny, degrade, manipulate or destroy information in a <b>Computer System</b> of or in another sovereign state.
<b>Cyber Security Breach</b>	<ul style="list-style-type: none"> <li>a) unauthorised access or use of <b>Computer Systems</b>;</li> <li>b) a denial of service attack affecting <b>Computer Systems</b>;</li> <li>c) the infection of <b>Computer Systems</b> with malicious code or software; or</li> <li>d) the transmission of malicious code or software from a <b>Computer System</b>.</li> </ul>
<b>Damages</b>	<ul style="list-style-type: none"> <li>a) any amount an <b>Insured</b> is legally liable to pay to a <b>Third Party</b> as compensation arising from a judgment against an Insured including awards of a <b>Third Party's</b> legal costs or expenses; or</li> <li>b) any reasonable settlement paid to a <b>Third Party</b> for the resolution of a <b>Claim</b> or Inquiry with the <b>Insurer's</b> consent and in accordance with the <i>Claim Conditions</i> and <i>General Conditions</i> of this <b>Policy</b>.</li> </ul>
<b>Defence Costs</b>	the reasonable legal costs including reasonable appeal costs and other necessary expenses incurred in the investigation, defence, settlement and/or appeal of a <b>Claim</b> by the <b>Insured</b> or on the <b>Insured's</b> behalf with the <b>Insurer's</b> prior written consent. <b>Defence Costs</b> do not include the <b>Insured's</b> overheads or any salaries, wages, fees or benefits of <b>Insured Persons</b> .
<b>Documents</b>	any documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material. Documents does not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
<b>Employee</b>	<ul style="list-style-type: none"> <li>a) any natural person employed under a contract of service or apprenticeship with any <b>Policyholder</b> or <b>Subsidiary</b>;</li> <li>b) any contractor or consultant acting under a written contract for the performance of <b>Professional Services</b> solely for and on behalf of any <b>Policyholder</b> or <b>Subsidiary</b>; or</li> <li>c) any natural person volunteer acting solely under the direct supervision of any <b>Policyholder</b> or <b>Subsidiary</b>.</li> </ul>
<b>Essential Service</b>	a service that is essential for the maintenance of vital functions of a sovereign state including but not limited to financial institutions and associated financial market infrastructure, health services or utility services.
<b>Executive Officer</b>	any partner, principal, director, chief executive officer, chief financial officer, chief operating officer, chief information officer, general counsel or equivalent position of any <b>Policyholder</b> or <b>Subsidiary</b> .

Word or term	Meaning
<b>Impacted State</b>	a sovereign state where a <b>Cyber Operation</b> has a major detrimental impact on: <ul style="list-style-type: none"> <li>a) the functioning of that sovereign state due to disruption to the availability, integrity or delivery of an <b>Essential Service</b> in that sovereign state; and/or</li> <li>b) the security or defence of that sovereign state.</li> </ul>
<b>Inquiry</b>	an investigation, examination or inquiry by a Coroner, <b>Regulatory Authority</b> or disciplinary committee of any association or professional body of which the <b>Insured</b> is a member. Inquiry does not include any audit of the <b>Insured</b> , a <b>Royal Commission</b> , any inquiry into the industry as whole, or any routine supervision, inspection, compliance audit or similar review.
<b>Insured</b>	<ul style="list-style-type: none"> <li>a) the <b>Policyholder</b> or any <b>Subsidiary</b>; and</li> <li>b) any <b>Insured Person</b>.</li> </ul>
<b>Insured Person</b>	<ul style="list-style-type: none"> <li>a) any <b>Executive Officer</b>; or</li> <li>b) any <b>Employee</b>.</li> </ul>
<b>Insurer</b>	the insurer specified as such in the <b>Policy Schedule</b> .
<b>Limit of Liability</b>	the amount shown as the <b>Limit of Liability</b> in the <b>Policy Schedule</b> .
<b>Loss</b>	<ul style="list-style-type: none"> <li>a) <b>Damages</b></li> <li>b) <b>Defence Costs</b></li> <li>c) <b>Court Attendance Costs</b> pursuant only to the Court Attendance Costs Extension.</li> <li>d) <b>Inquiry Costs and Expenses</b> pursuant only to the Inquiry Costs and Expenses Extension.</li> <li>e) <b>Penalties</b> pursuant only to the Penalties Extension.</li> </ul> <p><b>Loss</b> shall also include <b>Cyber Mitigation Costs</b> where such extension is provided for in the <b>Policy Schedule</b>.</p> <p><b>Loss</b> does not include:</p> <ul style="list-style-type: none"> <li>a) taxes, fines, or penalties payable by the <b>Insured</b>;</li> <li>b) non-compensatory damages including exemplary, aggravated, punitive, multiple, or liquidated damages, or restitutionary relief;</li> <li>c) costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; or</li> <li>d) any matters which may be deemed uninsurable under the law governing this <b>Policy</b> or the jurisdiction in which a <b>Claim</b> or <b>Inquiry</b> is brought.</li> </ul>
<b>Penalty</b>	any civil penalty imposed by a <b>Regulatory Authority</b> or a disciplinary committee of any association or professional body of which the <b>Insured</b> is a member.
<b>Policy Period</b>	the period specified in the <b>Policy Schedule</b> , unless ending earlier in accordance with the <b>Policy</b> terms or relevant law.
<b>Policy</b>	this policy wording and the <b>Policy Schedule</b> , including any endorsements.
<b>Policy Schedule</b>	the schedule to this <b>Policy</b> , including any endorsements.
<b>Policyholder</b>	the policyholder named as such in the <b>Policy Schedule</b> .
<b>Pollutant</b>	any solid, liquid, gaseous, radiological, biological, or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkali, chemicals, germs, fibres, fungus, or waste including, but not limited to asbestos or toxic mould. Waste includes materials to be recycled, reconditioned or reclaimed.
<b>Premium</b>	the amount shown as premium in the <b>Policy Schedule</b> .

Word or term	Meaning
<b>Professional Services</b>	<p>the provision of professional services to a <b>Third Party</b> for a fee, commission, or other remuneration as a licenced:</p> <ul style="list-style-type: none"> <li>a) real estate agent;</li> <li>b) buyers agent;</li> <li>c) property manager;</li> <li>d) body corporate agent;</li> <li>e) strata or community managing agent;</li> <li>f) real property and livestock auctioneer; or</li> <li>g) stock and station agent.</li> </ul>
<b>Property Damage</b>	the damage to or loss of or destruction of tangible property or loss of use of it.
<b>Regulatory Authority</b>	a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.
<b>Retention</b>	the amount shown as the retention in the <b>Policy Schedule</b> .
<b>Retroactive Date</b>	the retroactive date specified in the <b>Policy Schedule</b> .
<b>Royal Commission</b>	a royal commission or commission of inquiry.
<b>Senior Counsel</b>	a barrister in active practice who is entitled to use the post-nominals QC, KC, or SC in any one or more superior court.
<b>Sublimit</b>	any amount shown as a <b>Sublimit</b> of indemnity in the <b>Policy Schedule</b> .
<b>Subsidiary</b>	<p>a company or entity of which the <b>Policyholder</b>:</p> <ul style="list-style-type: none"> <li>a) is the sole owner; or</li> <li>b) controls the composition of the board of directors; or</li> <li>c) controls more than half the voting power; or</li> <li>d) holds more than half of the issued share capital;</li> </ul> <p>as at the commencement of the <b>Policy Period</b>.</p> <p>Provided always that cover is only available under this <b>Policy</b> for a <b>Claim, Inquiry or Loss</b> which arises from the performance of <b>Professional Services</b> while such company or entity is a <b>Subsidiary</b> of the <b>Policyholder</b>.</p>
<b>Third Party</b>	<p>any entity or natural person other than:</p> <ul style="list-style-type: none"> <li>a) an <b>Insured</b>; or</li> <li>b) any entity or natural person which has a financial interest or executive role in the <b>Policyholder</b> or any <b>Subsidiary</b>.</li> </ul>
<b>War</b>	war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

## INSURING CLAUSE

### LEGAL LIABILITY AND DEFENCE COSTS

The **Insurer** agrees to pay the **Insured's** civil liability for **Loss** solely arising:

- a) from any **Claim** first made against the **Insured** during the **Policy Period**; and
- b) out of the performance of the **Professional Services** by the **Insured**.

## INSURING CLAUSE CLARIFICATIONS

Subject to the Insuring Clause, but without limiting its scope, the **Insurer** agrees to pay the **Insured's** civil liability for **Loss** from any **Claim**:

<b>Artificial Intelligence</b>	made against the <b>Insured</b> arising out of the use of artificial intelligence software in the performance of <b>Professional Services</b> .
<b>Consumer Protection Legislation</b>	made under the Australian Consumer Law or the Competition and Consumer Act 2010 (Cth) or any similar legislation enacted by any states or territories in Australia and New Zealand.
<b>Cyber Risks</b>	arising out of any <b>Cyber Security Breach</b> or <b>Cyber Incident</b> .
<b>Defamation</b>	made against the <b>Insured</b> for defamation, slander, or libel.
<b>Fiduciary Duty</b>	made against the <b>Insured</b> for a breach of fiduciary duty arising out of the performance of <b>Professional Services</b> .
<b>Intellectual Property</b>	made against the <b>Insured</b> for any unintentional infringement of copyright, trademark, registered design, plagiarism or breach of confidentiality.
<b>Loss of Documents</b>	made against the <b>Insured</b> for the unintentional destruction, damage, misplacement, deletion, or loss of <b>Documents</b> while in the <b>Insured's</b> physical custody or control and for which the <b>Insured</b> is legally responsible.
<b>Privacy Complaints and Claims</b>	in relation to actual or alleged breaches of confidentiality or privacy.
<b>Vicarious Liability</b>	made against the <b>Insured</b> arising out of the performance of <b>Professional Services</b> by any other person on behalf of the <b>Insured</b> for which the <b>Insured</b> is legally liable or is alleged to be legally liable.
<b>Former Subsidiaries</b>	made against the <b>Insured</b> arising out of the performance of <b>Professional Services</b> by a <b>Subsidiary</b> prior to the date of its acquisition by another entity.
<b>Joint Venture</b>	made against the <b>Insured</b> for that proportion of any legal liability arising out of the performance of the <b>Insured's Professional Services</b> in which <b>the Insured</b> is engaged as a joint venturer or as a partner, providing that the joint venture has been disclosed by the <b>Policyholder</b> to the <b>Insurer</b> prior to the inception of the <b>Policy</b> . No cover is provided to any associate or joint venture partner of the <b>Insured</b> .

## EXTENSIONS

### ADVANCEMENT OF DEFENCE COSTS & INQUIRY COSTS AND EXPENSES

If the **Insured** notifies the **Insurer** of a **Claim** or an **Inquiry**, **Insurers** will pay the **Insured's Defence Costs** or **Inquiry Costs and Expenses** as applicable after erosion of the **Retention**, prior to acceptance that coverage applies under this **Policy**, which the **Insured** incurs with a lawyer on the **Insurer's** legal panel up to the **Sublimit** while the **Insurer** determines whether or not the **Policy** responds, provided invoices are sent to the **Insurer** for payment. However, the **Insured** must repay the **Insurer** all payments of **Defence Costs** and **Inquiry Costs and Expenses** to the extent that such **Defence Costs** and **Inquiry Costs and Expenses** are determined to not be indemnified under the **Policy**.

The **Insurers** liability to indemnify the **Insured** under this extension shall not exceed the **Sublimit** stated in the **Policy Schedule**.

## CONDUCT EXTENSION

Notwithstanding the Conduct Exclusion, the **Insurer** will pay the **Insured's** civil liability for **Loss** arising from any **Claim** for dishonest or fraudulent conduct by an **Insured Person** in the performance of **Professional Services** for the actual or alleged performance of Professional Services that are (a) criminal, dishonest, fraudulent, malicious or deliberately reckless; or (b) a deliberate breach of contract, professional duty or any law which, but for the Conduct Exclusion, would have been covered under this **Policy**, provided that no cover is provided to any **Insured** committing or acquiescing in the act or omission that would have otherwise caused the Conduct Exclusion to apply. For the purposes of this Extension, the conduct of any **Executive Officer** is imputed to the **Insured**.

## CONTINUOUS COVER

Notwithstanding sub-paragraph (b) of the Prior or Pending Exclusion, the **Insurer** will pay the **Insured's** civil liability for **Loss** arising out of any **Claim** first made against the **Insured** during the **Policy Period** or reasonable legal costs and expenses resulting from the **Insured's** response or attendance at any **Inquiry** into the conduct of the **Insured's Professional Services** first commenced during the **Policy Period**, which arises out of facts or circumstances which ought to have been notified to the **Insurer** prior to the commencement of the **Policy Period** but weren't, where:

- a) the **Insured** has been continuously insured by the **Insurer** since the date when the facts giving rise to the **Claim** or **Inquiry** should have been notified; or
- b) the **Insured** first became aware of the facts that might give rise to the **Claim** or **Inquiry** after the **Continuity Date**;

Provided that:

- a) the failure to notify the **Insurer** was not deliberate or fraudulent;
- b) the **Claim** or **Inquiry** shall be dealt with in accordance with the policy limits, terms and conditions in force when the **Insured** was first aware of circumstances giving rise to the **Claim** or **Inquiry**; and
- c) the **Insurer's** liability to indemnify the **Insured** is reduced to the extent of any prejudice suffered by the **Insurer** as a result of the late notification.

## COURT ATTENDANCE COSTS

The **Insurer** will pay the amounts specified in the **Policy Schedule**, up to the relevant **Sublimits**, for **Court Attendance Costs** incurred by **Employees** or **Executive Officers** if they attend court as a witness in any **Claim** or **Inquiry** for which the **Insurer** has agreed to indemnify the **Insured**. The **Insured** does not have to pay any **Retention** under this Extension.

## EXTENDED REPORTING PERIOD

If this **Policy** is:

- a) not renewed; or
- b) cancelled (for any reason other than non-payment of premium);

then the **Insurer** will, subject to the full terms and conditions of this **Policy**, indemnify the **Insured** for any **Claim** first made within 60 days after the expiration or cancellation of this **Policy** and arising out of the performance of the **Professional Services** performed prior to the expiration or cancellation of this **Policy**. This additional benefit ceases once the **Insured** is insured under another professional indemnity insurance policy.

## FRANCHISORS' INDEMNITY

Where the **Policyholder** or a **Subsidiary** is operating as a franchisee under a written franchisee contract, the **Insurer** will pay on behalf of the franchisor all **Loss** resulting from any **Claim** made against them as a result of an act, error, omission or other conduct of any **Insured**, provided always that such **Claim** would be covered under this **Policy** had such **Claim** been made against an **Insured**.

## GENERAL INSURANCE DISTRIBUTION

The definition of **Professional Services** is hereby extended to include the distribution of general insurance products by any **Insured not** acting as an authorised representative of an Australian Financial Services Licence holder.

## HEIRS AND ESTATES

In the event of the death or mental incapacity of any **Insured Person** the **Insurer** agrees to extend the definition of **Insured** to include their heirs, estate, legal representatives or assignees.

## INQUIRY COSTS AND EXPENSES

The **Insurer** will pay the **Insured's** reasonable legal costs and expenses, up to the **Inquiry Costs and Expenses Sublimit** stated in the **Policy Schedule**, resulting from the **Insured's** response or attendance at any **Inquiry** into the conduct of the **Insured's Professional Services**, where the **Insured** has been first served during the **Policy Period** with written notice requiring them to respond to, or attend, the **Inquiry**.

This extension does not include the **Insured's** overheads or any salaries, wages, fees or benefits of any **Insured Persons**.

## LEGAL ADVISORY PANEL

The **Insurer** will pay for a consultation (of up to one hour) with a member of the **Insurer's** legal advisory panel on any matter related to the risks insured under the **Policy**, except in relation to the scope of the **Policy**. For more information, please see the **Insurer's** website or the relevant brochure.

## NEWLY CREATED OR ACQUIRED SUBSIDIARIES

The **Insurer** will extend the definition of the **Insured** to include **Subsidiaries** created or acquired by the **Insured** during the **Policy Period**. The cover under this additional benefit:

- a) ceases after 30 days from the creation or acquisition of that **Subsidiary**, unless we have agreed to insure that **Subsidiary** and the **Insured** have paid the **Insurer** any additional premium;
- b) does not apply to **Claims, Inquiries** or **Loss** arising from acts, errors or omissions occurring prior to the acquisition of such **Subsidiary**; and
- c) only applies to the same **Professional Services** as provided by the **Insured**.

## PENALTIES

Notwithstanding the definition of **Loss**, the **Insurer** will indemnify the **Insured** for **Penalties** up to the **Penalties Sublimit**, which the **Insurer** is not prohibited by law from paying, arising out of a **Claim** first made or **Inquiry** first commenced during the **Policy Period**, arising out of the performance of the **Professional Services**. This Extension does not include **Loss** that would otherwise qualify for cover under the Optional Extension for **Cyber Mitigation Costs**.

## PUBLIC RELATIONS EXPENSES

The **Insurer** will pay reasonable costs up to the **Public Relation Expense Sublimit** of a public relations consultant the **Insured** engages to protect the **Insured's** reputation from damage which may result in a **Claim** if an allegation has been made against the **Insured** about the performance of **Professional Services**. This Extension does not include **Loss** that would otherwise qualify for cover under the Optional Extension for **Cyber Mitigation Costs**.

## RUN OFF COVER

If the **Policyholder** ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the **Policy Period** may be extended for up to eighty-four (84) months with the **Insurer's** agreement, provided that:

- a) any cover will only apply in respect of any **Claim, Inquiry** or **Loss** arising from the **Professional Services** undertaken prior to the effective date that the **Policyholder** ceased to exist or operate or was consolidated with, merged into or acquired by another entity;
- b) additional premium, to be determined at sole discretion of the **Insurer**, is payable for any period by which the run off cover exceeds the original expiry date of the **Policy Period**, and must be paid to the **Insurer** within thirty (30) days of the effective date that the **Policyholder** ceased to exist or operate or was consolidated with, merged into or acquired by another entity; and
- c) this Extension does not increase the **Limit of Liability** or the **Aggregate Limit**.

## SEVERABILITY / NON-IMPUTATION / INNOCENT NON-DISCLOSURE

The **Insurer** agrees that where this **Policy** insures more than one **Insured**, where an **Insured Person**:

- a) failed to comply with the duty of disclosure; or
- b) made a misrepresentation to the **Insurer** before the **Policy** was entered into;

this shall not prejudice the right of any other **Insured Person** to indemnity as may be provided by this **Policy**.



Provided that:

- a) the **Insured Person** was not aware of the failure or misrepresentations;
- b) as soon as is reasonably practicable upon becoming aware of any such conduct, the **Insured Person** advises the **Insurer** in writing of all known facts in relation to such conduct; and
- c) the conduct of any **Executive Officer** is imputed to the **Insured**.

## OPTIONAL EXTENSIONS

### CYBER MITIGATION COSTS

If there is any actual, alleged or suspected breach of privacy in relation to personal information collected during the performance of **Professional Services** arising from **Cyber Security Breach** or a **Cyber Incident** first discovered and reported during the **Policy Period** the **Insurer** will pay:

- a) the reasonable costs incurred by the **Insured** to notify any client, **Third Party** or regulator in accordance with the **Insured's** legal or regulatory duties; and
- b) any **Penalties** under the Privacy Act 1988 (Cth), notwithstanding the Definition of **Loss**; and
- c) the reasonable costs of a public relations consultant the **Insured** engages to protect the **Insured's** reputation from damage.

This Optional Extension:

- a) is valid regardless of whether a **Claim** has been made against the **Insured**;
- b) does not cover the **Insured's** overheads or the salaries, wages, fees, or benefits of any **Insured Person**.
- c) does not cover any forensic investigation costs arising from a **Cyber Security Breach** or a **Cyber Incident**;
- d) does not cover costs to comply with any injunctive relief; and
- e) is subject to the **Sublimit** stated in the **Policy Schedule** for **Cyber Mitigation Costs**.

### DEFENCE COSTS IN ADDITION

Notwithstanding the How Much the Insurer Will Pay condition, the **Insurer** will pay **Defence Costs** in addition to the **Limit of Liability** up to the amount specified in the **Policy Schedule**, in the defence or settlement of a **Claim** indemnified by this **Policy**, provided always the **Insured** has obtained the **Insurer's** prior written consent to incur such **Defence Costs**.

If a payment in excess of the **Limit of Liability** (any one **Claim**) is made to dispose of a **Claim**, the **Insurer's** liability for such **Defence Costs** will be the same proportion as the amount of the **Limit of Liability** (any one **Claim**) bears to the amount paid to dispose of the **Claim** but shall never exceed the amount specified in the **Policy Schedule**.

### MITIGATION COSTS

The **Insurer** shall indemnify the **Policyholder** for **Claim Prevention Costs and Expenses** incurred with the **Insurer's** prior written consent.

The **Insurers** liability to indemnify the **Insured** under this extension shall not exceed the **Sublimit** stated in the **Policy Schedule**.

## EXCLUSIONS

The **Insurer** will not be liable under this **Policy**, including under any Extension or Optional Extension, in respect of any **Claim, Inquiry, Loss** or any other payments under this **Policy** arising directly or indirectly from, based upon, attributable to, or in consequence of:

### ANTI-COMPETITIVE CONDUCT

any restraint of trade or other restrictive trade practices, anti-trust, predatory pricing, price manipulation or fixing, tortious interference in a **Third Party's** business including a **Third Party's** contractual arrangements. This includes but is not limited to any such conduct in breach of any competition, consumer or fair trading legislation of Australia, or its states or territories, or any similar such legislation which may be applicable anywhere else in the world.

### BODILY INJURY AND PROPERTY DAMAGE

**Bodily Injury** and/or **Property Damage** except to the extent that the **Loss** arises out of the performance of the **Professional Services** by the **Insured**.

## COMINGLING OF FUNDS

any actual or alleged commingling of funds by the **Insured** or any inability or failure of any **Insured** to account for client funds.

## CONDUCT

the actual or alleged performance of **Professional Services** that are:

- a) criminal, dishonest, fraudulent, malicious or deliberately reckless; or
- b) a deliberate breach of contract, professional duty or any law.

However, this exclusion shall only apply in the event such conduct is established by final adjudication by a court or tribunal or arbitrator, or a written admission by an **Insured**. In the event of such, the **Insured** shall reimburse the **Insurer** all **Loss** paid under this **Policy** in connection with such **Claim, Inquiry** or other matter which may be subject to indemnity under this **Policy**.

## CONFLICT OF INTEREST

any actual or alleged;

- a) conflict of interest; or
- b) beneficial or financial ownership or interest.

However, this exclusion shall not apply where an **Insured** has declared the above in writing to a claimant **Third Party**.

## CONTRACTUAL LIABILITY

any liability assumed under a contract or agreement or guarantee (including but not limited to an indemnity and liquidated damages) or warranty which the **Insured** has agreed to give in the course of the **Professional Services** unless:

- a) the **Insured** has assumed a liability under contract by reason of having contracted out of the operation of proportional liability legislation; or
- b) such liability would have attached in the absence of such contract or agreement.

## DIRECTORS AND OFFICERS

any **Insured** acting in the capacity of a director or officer of the **Insured**, a company, association, or other legal entity or in the capacity of a superannuation trustee.

## FORCE MAJEURE

fire, smoke, explosion, solar flare, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, or act of God, however caused.

## EXCLUDED ACTIVITIES

the provision of, or failure to provide any:

- a) capital gains projections;
- b) rental return projections;
- c) conveyance services;
- d) legal advice;
- e) business broking services; or
- f) taxation advice.

## FAILURE TO DISCLOSE COMMISSIONS

the failure of any **Insured** to give written disclosure of any commissions, fees or other benefits received, in connection with the provision of **Professional Services**.

## INFRASTRUCTURE FAILURE

any failure, interruption, or malfunction of financial securities, stock exchanges or clearing houses, power, water, oil, gas, electrical, sewage, telecommunications, internet, satellite, other utilities, or mechanical infrastructure or services not under the operational control of the **Insured**.

## INTELLECTUAL PROPERTY

any deliberate infringement of copyright, trademark, registered design, plagiarism, breach of confidentiality or any other intellectual property.

## JURISDICTIONAL LIMITS

any **Claim** or **Inquiry** brought within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or which the **Insurer** is prohibited from paying by law in the jurisdiction concerned.

## LICENSING

any **Insured** actually or allegedly not being licenced, registered, or accredited to provide the **Professional Services**.

## NUCLEAR

ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste which is from the combustion of any nuclear fuel.

## OBLIGATIONS TO EMPLOYEES

- a) **Bodily Injury** of any **Insured Person**; or
- b) damage to or destruction of any property of any **Insured Person** including loss of use of property, arising out of, or in the course of their employment with the **Insured**; or
- c) any dispute in connection with employment.

## PATENTS AND TRADE SECRETS

the actual or alleged breach of any patent or trade secret.

## POLLUTION

- a) the threatened, actual or alleged discharge, release or escape of any **Pollutant**.
- b) any direction, request or effort to:
  - i. test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**; or
  - ii. respond to or assess the effects of **Pollutants**.

## PRIOR OR PENDING

- a) any **Claim, Inquiry** or other matter which may be subject to indemnity under this **Policy** made, threatened or intimated against the **Insured** prior to the **Policy Period**; or
- b) any fact or circumstance:
  - i. of which notice has been given, or ought reasonably to have been given, under any previous policy, or disclosed in a proposal form; or
  - ii. of which the **Insured** first became aware prior to the **Policy Period**, and which the **Insured** knew or ought reasonably to have known had potential to give rise to a **Claim, Inquiry** or **Loss**.

## PRODUCTS LIABILITY

- g) any goods or products, sold, supplied, repaired, altered, treated, manufactured, constructed, installed, or maintained by the **Insured** or the **Insured's** consultants, sub-contractors or agents; or
- h) withdrawing a good or product from sale or recalling any good or product.

## PROPERTY LIABILITY

any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any property by the **Insured** (including aircraft, real property, motor vehicles or watercraft).

## REFUNDS OF FEES OR CHARGES

any return or refund of any professional fees, charges, commissions, or other remuneration received by, paid by or payable to the **Insured**.

## RELATED OR ASSOCIATED ENTITIES

any **Claim, Inquiry** or other matter which may be subject to indemnity under this **Policy** brought or maintained by or on behalf of:

- a) the **Insured**; or
- b) any parent, successor or assign of any **Insured**, or
- c) any entity in which an **Insured** or any **Executive Officer** has an executive or controlling interest, or such entity's successor or assign.

## RETROACTIVE DATE

the performance of the **Professional Services** prior to the **Retroactive Date** stated in the **Policy Schedule**.

## SANCTIONS

any **Claim, Inquiry** or other matter which may be subject to indemnity under this **Policy** where payment of such **Claim** or **Loss** or provision of any such benefit would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the United Kingdom, the United States of America, or Australia.

## TERRORISM

any act of terrorism including, but not limited to any actual, or any threat of, force, violence or intimidation committed by any person or persons for any ideological, religious, political or similar purpose including with the intention to overthrow, influence or disrupt any government and or any policy of any government.

## TRADING DEBTS

- a) any trading debt, liability or losses incurred by the **Insured**; or
- b) any guarantee given by the **Insured** for a debt or the **Insured's** insolvency.

## VALUATION SERVICES

the provision of valuation services. However, this exclusion shall not apply to the provision of a market appraisal, estimate or opinion as to a potential sale price of any real property provided such appraisal, estimate or opinion is in writing accompanied by a disclaimer that it is not a valuation.

## WAR & STATE CYBER OPERATIONS

- a) a **War**;
- b) a **Cyber Operation** carried out as part of, or the immediate preparation for a **War**; or
- c) a **Cyber Operation** causing an **Impacted State**.

## CLAIMS CONDITIONS

When making a claim, the **Insured** must have met and then continue to comply with the conditions of this **Policy**. If the **Insured** does not meet these conditions or make a fraudulent claim the **Insurer** may:

- a) refuse to pay the **Insured's** claim or reduce what we pay for the **Insured's** claim to the extent that the **Insurer's** interests have been prejudiced;
- b) cancel the **Policy** in accordance with *General Conditions - Cancellation* of the **Policy**.

## ALLOCATION

Where a **Claim, Inquiry** or **Loss** is covered only in part by this **Policy** the **Insurer** and the **Insured** will use their best efforts to agree a fair and proper allocation of amounts that are covered and those that are not covered under this **Policy**. If the **Insurer** and the **Insured** cannot agree on a fair and proper allocation then the matter will be referred to **Senior Counsel** (to be mutually agreed upon by the **Insured** and the **Insurer**, or in the absence of agreement, appointed by the President of the relevant state or territory Law Society in the state or territory in which the **Claim** or **Inquiry** is made) whose opinion will be binding. In formulating their opinion, **Senior Counsel** shall take into consideration the respective legal exposures between the covered and uncovered elements of the **Claim, Inquiry** or **Loss**, as well as the economics of the matter, including the likely **Defence Costs** and the prospects of the **Insured** successfully defending the **Claim**. The **Insurer** and the **Insured** shall each have the opportunity, but not the obligation, to make a submission to **Senior Counsel** on the reasons for their respective position.

The costs of **Senior Counsel's** opinion will be regarded as part of **Defence Costs** or **Inquiry Costs and Expenses**.

Where the amounts covered under this **Policy** remain unagreed or undetermined, the **Insurer** shall only be liable to pay the proportion of any **Claim, Inquiry** or **Loss** which it considers covered under the **Policy** after a fair and proper allocation. Once such fair and proper allocation is agreed or determined, such allocation shall be retrospectively applied to all amounts incurred prior to such agreement or determination.

## ASSISTANCE AND CO-OPERATION

The **Insured** must provide the **Insurer** with all reasonable assistance the **Insurer** requires when the **Insured** deals with the **Insurer** and the **Insured** will:

- a) be truthful and frank;
- b) not behave in a way that is abusive, dangerous, hostile, improper or threatening;
- c) co-operate fully with the **Insurer**, even after the **Insurer** has paid a claim.

## DEFENCE AND SETTLEMENT

The **Insurer** may:

- a) instruct the **Insured** to conduct the defence of a **Claim** if the **Insurer** believes that it will not exceed the **Retention**, in which case the **Insured** will be responsible for the **Insured's** own **Defence Costs** and any settlement up to the amount of the **Retention**. In the event that any reasonable **Defence Costs** or payment made to dispose of the **Claim** exceeds the **Retention** the **Insurer** will reimburse the **Insured** those reasonable **Defence Costs**.
- b) take over and conduct, in the **Insured's** name, the defence or settlement of any **Claim** at any time, in which case the **Insurer** will then have sole control of that **Claim**.

The **Insured** agrees:

- a) not to negotiate or settle any **Claim**, incur any **Defence Costs** or **Inquiry Costs and Expenses**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or **Loss** without the **Insurer's** written consent, provided that the **Insurer** shall not unreasonably withhold such consent;
- b) that any information that is received by the **Insurer's** external lawyers in the course of investigating, defending or settling any **Claim** made against the **Insured** or **Inquiry** can be provided to the **Insurer** and relied upon by the **Insurer** in relation to any issue that may arise regarding the **Insurer's** liability to indemnify the **Insured**.

## NOTIFICATION

The **Insured** must notify the **Insurer** as soon as the **Insured** become aware of a **Claim, Inquiry** or **Loss** by contacting the **Insurer** in writing, using the address or email address shown in the **Policy Schedule**. The **Insured** may also ask the **Insured's** financial services provider to notify the **Insurer** on the **Insured's** behalf. The **Insured** are responsible for ensuring the **Insured's** financial services provider complies with the notification provisions of this **Policy**. The **Insured** must provide the **Insurer** with:

- a) all documentation in the **Insured's** possession; and
- b) information the **Insured** is aware of;

which relates to the **Claim, Inquiry** or **Loss** the **Insured** has notified to the **Insurer**.

## THE INSURED'S RIGHT TO CONTEST

In the event that the **Insurer** recommends a settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**, provided that the **Insurer's** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred with the **Insurer's** written consent up to the date of such election, less the **Retention**.

## SENIOR COUNSEL CLAUSE

The **Insurer** shall not require the **Insured** to contest any **Claim** unless a **Senior Counsel** (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such **Claim** should be contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the claimant, the likely **Defence Costs** and the prospects of the **Insured** successfully defending the **Claim**. The cost of such **Senior Counsel's** opinion shall be regarded as part of **Defence Costs**.

# GENERAL CONDITIONS

## CANCELLATION

The **Policyholder** can cancel this **Policy** at any time by telling the **Insurer** in writing. Provided that no **Claim, Inquiry** or **Loss** has been paid under this **Policy**, the **Insurer** will refund the **Policyholder** the proportion of the premium for the remaining unexpired **Policy Period**.

The **Insurer** may cancel this **Policy** in any of the circumstances permitted by law by informing the **Policyholder** in writing. The **Insurer** will give the **Policyholder** notice in person or send it to the **Policyholder's** address (including by email address) last known to the **Insurer**. The cancellation shall be effective within 5 business days of the notification to the **Policyholder**. If the **Policyholder** has paid the premium in advance, the **Insurer** will refund the **Policyholder** the proportion of the premium for the remaining **Policy Period**.

## CLAIMS MITIGATION AND CO-OPERATION

If the **Insured**, either prior to or during the **Policy Period**, become aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, the **Insured** must use due diligence and do all things reasonably practicable to avoid or diminish any **Loss**.

## CONTRIBUTION

If at the time of any **Loss**, damage, or liability there is any other insurance (whether effected by the **Insured** or by any other person) which covers the same **Loss**, damage or liability the **Insured** must provide the **Insurer** with any reasonable assistance the **Insurer** requires to make a claim for contribution from any other **Insurer(s)**.

## GOVERNING LAW

This **Policy** is governed by the law of the Australian State or Territory in which this **Policy** is issued.

## MATERIAL ALTERATION TO RISK

The **Insured** will give the **Insurer** notice in writing as soon as possible of any material alterations to the risk that is the subject of this **Policy** including but not limited to:

- a) any change in the **Professional Services**;
- b) the **Insured** going into bankruptcy receivership, liquidation or any other form of external administration.

If the **Insured** does not provide such notification before the happening of a **Claim, Inquiry** or any other matter which may be covered under this **Policy** then, subject to the *Insurance Contracts Act 1984* (Cth), the **Insurer** may refuse to pay a **Claim, Inquiry**, or **Loss**, either in whole or in part.

## OTHER INSURANCE

The **Insurer** will only pay **Loss** in excess of any other insurance cover that the **Insured** may have unless any such other insurance is written as a specific excess insurance over this **Policy**.

## POLICY INTERPRETATION

- a) The headings in this **Policy** do not form part of the **Policy Wording** and are for descriptive purposes only.
- b) A reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes all consolidations, amendments, re-enactments and replacements thereof.
- c) A word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender.
- d) Bolded terms in the **Policy** may refer to a defined term in the Definitions section, or to a term stated in the **Policy Schedule**, or both.

## REASONABLE CARE

The **Insured** must take reasonable care to prevent or minimise any **Loss** that might give rise to a **Claim** or **Inquiry** under this **Policy**. At all times, the **Insured** must:

- a) minimise the cost of any **Claim** under this **Policy**; and
- b) comply with all laws.
- c)



## RECOVERY ACTION AND UNINSURED LOSS

The **Insured** must not do anything, including but not limited to agreeing not to seek any compensation from any other person that is or is potentially liable to compensate the **Insured** for any **Loss**, that may prejudice the **Insurer's** rights of recovery against any **Third Party**. If the **Insurer** pays the **Insured's** claim, the **Insurer** may seek to recover the amount paid to the **Insured** from the **Third Party** who caused the **Loss**. The **Insurer** will do this in the **Insured's** name and the **Insured** must assist the **Insurer** with any reasonable requests. If the **Insured** has suffered **Loss** which is not covered by this **Policy** the **Insurer** may offer to attempt to recover this for the **Insured**.

The **Insured** may specifically ask the **Insurer** to recover this for the **Insured**. The **Insured** will need to give the **Insurer** documents supporting the **Insured's** loss. Before the **Insurer** includes any uninsured loss in the recovery action the **Insurer** will also ask the **Insured** to agree to the basis on which the **Insurer** will handle the **Insured's** recovery action. The **Insured** may need to contribute to legal costs in some circumstances.

## RELATED CLAIMS

For the purposes of applying any **Retention** or **Limit of Liability** or **Sublimit**, all **Loss** otherwise recoverable under this **Policy** resulting from or in connection with;

- a) one and the same act error or omission; or
  - b) a series of acts errors or omissions arising out of or attributable to the same originating cause, or source,
- shall be deemed to be one **Claim** or **Inquiry**.

## RUN-OFF

If the **Policyholder** ceases to exist or operate or is consolidated with, merged into or acquired by any other entity for whatsoever reason including, but not limited to, its administration or liquidation, then this **Policy** shall continue up to the expiry of the **Policy Period** but any cover will only apply in respect of any **Claim, Inquiry** or **Loss** arising from the **Professional Services** undertaken prior to the effective date that the **Policyholder** ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

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