



 **PRORISK**

Professional Indemnity Insurance Policy

 Policy Wording

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Professional Indemnity Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. This **policy** includes this document and the General Terms & Conditions attached to this **policy** and this **policy** should be interpreted with the General Terms and Conditions. **Our** total aggregate liability under each insuring clause will not exceed the sub-limits specified in the **schedule**. Each Insuring Clause and Extension of Cover is subject to the **excess** specified in the **schedule**.

SECTION 1: INSURING CLAUSES

1.1 Civil Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, in relation to the provision of **professional services**.

1.2 Employee Fidelity Cover

We will pay the **insured entity** for any **direct financial loss** committed by an **employee**, which is first **discovered** during the **insurance period** or, if applicable, during the **discovery period**.

1.3 Investigation Costs Cover

We will pay on behalf of an **insured** their **loss** arising from an **investigation** commenced during the **insurance period** or, if applicable, during the **discovery period**, by an **official body** into the affairs of the **insured** in relation to the provision of **professional services**.

1.4 Statutory Liability Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** made against the **insured** during the **insurance period** or, if applicable, during the **discovery period**, by an **official body** for a **statutory liability wrongful act**.

SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** specified in the **schedule**.

Extensions Applicable to All Insuring Clauses

2.1 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not to be covered or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

2.2 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **insured** creates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage due to this condition, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. We may then, with reasonable consideration, agree to extend cover in return for the payment of additional premium and any amendments to the terms of this **policy**. Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

2.3 Civil Penalties

The definition of **loss** is extended to include any civil fines or civil penalties that are insurable under the law applicable to this **policy**.

2.4 Continuity of Cover

Notwithstanding Exclusions 3.11 (Prior Policy) and 3.12 (Prior or Pending Proceedings), coverage is provided for **claims** or circumstances which were required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **policy** is a renewal or replacement of, provided always that:

- (a) the **claim** or circumstance which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) occurring after the **continuous cover date** specified in the **schedule**; and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **us** in respect of the **claim** or circumstance; and
- (c) the **insured** has maintained without interruption professional indemnity insurance or similar insurance with an insurer from the **continuous cover date** stated in the **schedule**; and
- (d) the **insured** has notified such a **claim** or circumstance under the prior professional indemnity insurance or similar insurance and is unable to obtain cover as it has been notified after such policy expired;

the cover provided by this Extension will be in accordance with all the terms and conditions (including, for the avoidance of doubt, the **limit of liability** and **excess** amounts, or any sub-limit, including the reduction of such **limit of liability** arising from any other claims under that policy) of the policy under which the **claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **claim** or circumstance than the provisions of this **policy**.

2.5 Costs Exclusive Excess

Where the **excess** is described in the **schedule** as “exclusive of **costs**”, the excess will not apply to **costs**. However, the **excess** will apply to all other types of **loss**.

2.6 Costs in Addition

We agree to pay to or on behalf of the **insured** any **costs** either incurred by **us** or the **insured** with our prior written consent which are in addition to the **limit of liability**, but only up to an amount equal to **limit of liability**. If the **loss** (excluding **costs**) exceeds the **limit of liability**, then we will pay the **proportionate costs**. The maximum we will pay for any **costs** that are incurred by the **insured** is an amount up to, but not exceeding the **limit of liability**. If any Extension to this **policy** provides a sub-limit, such a sub-limit is inclusive of **costs** unless otherwise stated expressly.

This Extension does not apply to any **claim** arising out of or in connection with proceedings brought in the **USA** or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of the **USA** or Canada or their respective territories or protectorates. Cover for this Extension is subject to the payment of the **excess**. Cover for this Extension is subject to the exhaustion of limits of any policy which is in excess of the original limit of liability under this **policy**, other than any similar cost in addition provisions under such excess policies.

2.7 Court Attendance Costs

We will pay the **insured** for **court attendance costs**.

2.8 Defamation

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, which results from the **insured** actually or allegedly making a defamatory statement, disparaging or harming the reputation or character of any natural person or organisation in relation to the provision of **professional services**, including but not limited to on the **internet, intranet** or **extranet**. This does not include:

- (a) any failure of the **insured** to remove any statement or publications from any **internet, intranet** or **extranet** site; or
- (b) any statement or publication made to or contained on any **open site** or **moderated site** by the **insured** and/or any **employee** or third party.

2.9 Discovery period following a change in exposure

If there is a **change in exposure**, we will only pay in respect of conduct wholly committed before the **change in exposure** and which is otherwise covered by this **policy**.

You may, up to thirty (30) days after the **change in exposure**, request an offer from **us** for a **discovery period** of up to eighty-four (84) months provided that:

- (a) the extended cover only applies in respect of **dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**;
- (b) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within thirty (30) days of the expiration of the **insurance period** and is only effective upon payment of the additional premium;
- (c) **you** will not have the right to purchase the twelve (12) month **discovery period** under this Extension in the event of any **change in exposure**;
- (d) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided;
- (e) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension;
- (f) any **premium** earned will be non-refundable; and
- (g) this Extension will not be available in the event of any actual or alleged insolvency, bankruptcy liquidation or similar occurrence of the **policyholder**.

Upon such request and following the receipt by **us** of any requested information, **we** will offer to extend the cover under this **policy** for a **discovery period** of up to eighty-four (84) months on such terms and conditions and at such premium as **you** and **us** may agree. Any additional premium will be non-refundable. Any extended cover will only apply to **claims** or any **investigation** arising from conduct before the **change in exposure** and which is notified to **us** before the expiry of the **discovery period**.

2.10 Discovery period following non-renewal

If, on expiry, any coverage clause or component under this **policy** is neither renewed nor replaced with a policy of insurance providing such coverage with any insurer, the **policyholder** is entitled to a **discovery period** of:

- (a) thirty (30) days automatically for no additional premium;
- (b) subject to the payment of an additional premium of 100% of the **premium**, twelve (12) months from the expiration of the **insurance period**; or
- (c) up to eighty-four (84) months, as may be requested from the expiration of the **insurance period** on such terms and for a **premium** that will be determined by **us**;

provided that:

- (a) the extended cover only applies in respect of **dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**;
- (b) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within thirty (30) days of the expiration of the **insurance period** and is only effective upon payment of the additional premium;
- (c) **you** will not have the right to purchase the twelve (12) month **discovery period** under this Extension in the event of any **change in exposure**;
- (d) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided;
- (e) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension;
- (f) any **premium** earned will be non-refundable; and
- (g) this Extension will not be available in the event of any actual or alleged insolvency, bankruptcy liquidation or similar occurrence of the **policyholder**.

2.11 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to 10% of the **limit of liability** (or relevant sub-limit, whichever is the lower amount) in the aggregate for all **claims** made during the **insurance period**, provided consent is obtained from **us** within thirty (30) days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

2.12 Intellectual Property

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, which results from the actual or alleged infringement of copyright, trademarks, registered designs in relation to the provision of **professional services**. However, this excludes the actual or alleged infringement of any patents.

2.13 Joint Venture Liability

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, resulting from the provision of **professional services** as a joint venture. **We** will not cover any liability of the joint venture partner.

2.14 Loss of Documents

We will pay the reasonable costs and expenses incurred by the **policyholder** in replacing or restoring **lost documents** for which the **policyholder** is legally responsible where the **lost documents** are first **discovered** to have been lost during the **insurance period**, and the failure to replace or restore such **lost documents** to do so would likely cause a **claim** otherwise covered under this **policy**.

2.15 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

2.16 Reinstatement of the Limit of Liability

We agree to reinstate the **limit of liability** where a **claim** erodes the **limit of liability** in whole or in part, up to the **maximum aggregate limit of liability**.

Cover for this Extension is subject to the following:

- (a) the exhaustion of limits of any policy which is in excess of the original **limit of liability** under this **policy**, other than any similar reinstatement provisions under such excess policies;
- (b) the reinstated **limit of liability** will only apply to **claims** or **losses**, which do not arise out of and do not have any connection with the originating cause of any **claim** or **loss** already paid or payable under the original **limit of liability**;
- (c) all other terms, conditions, exclusions and limitations of the **policy** will continue to apply in the same manner, in respect of any **claim** or **loss** to which the reinstated **limit of liability** applies; and
- (d) there will be no reinstatement of sub-limits, except if the original **limit of liability** is reinstated.

No cover is provided under this Extension for any **claim** arising out of or in connection with proceedings brought in the **USA** or Canada or the enforcement of any judgment, award or regulatory order obtained within and determined pursuant to the laws of the **USA** or Canada or their respective territories or protectorates.

The **maximum aggregate limit of liability** available under this **policy** is specified in the **schedule**.

2.17 Technology Services

Notwithstanding Exclusion 3.5 (Cyber), we will pay the **insured** against **civil liability** resulting from any **claim** arising from the performance of **technology services** where the **technology services** are integral to the provision of **professional services**.

2.18 Trade Practices (Fair Trading) Legislation Cover

We will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** or, if applicable, during the **discovery period**, for any actual or alleged breach of any provision of the *Competition and Consumer Act 2010* (Cth) or any section(s) of the Fair Trading Legislation in any State or Territory of the Commonwealth of Australia in relation to the provision of **professional services**.

2.19 Vicarious Liability

We agree to indemnify **you** for **your** vicarious liability for any conduct of **your**:

- (a) agents;
- (b) contractors; or
- (c) **employees**;

to the extent that **you** are liable and would otherwise be covered under the **policy** had **you** undertaken the conduct.

Extensions Applicable to Insuring Clause 1.2 – Employee Fidelity Cover Only

2.20 Direct Financial Loss Investigator Costs – Policyholder

We agree to reimburse the **policyholder** for their costs of hiring a **loss investigator** selected by the **policyholder** with **our** prior written consent (which will not be unreasonably delayed or withheld), which they incur in order to provide a **proof of loss** to **us**, following the **discovery** of a **direct financial loss** during the **insurance period**.

2.21 Direct Financial Loss Investigator Costs – ProRisk

If the **policyholder** elects not to use their own **loss investigator**, **we** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide **us** with their **proof of loss**, following the **discovery** of a **direct financial loss** during the **insurance period**.

Value Added Benefits

2.22 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the **insured's** insurance.

2.23 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to the defence, investigation or mitigation of a matter which **we** have accepted as notification of circumstances which may give rise to a **claim**. **We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of the defence of any **claim** covered by this **policy**.

2.24 Whistleblower Hotline

The **insured** and their internal and external stakeholders are entitled to access and use the ProRisk Whistleblower Hotline throughout the **insurance period**.

SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment:

3.1 Abuse

on account of any **claim** based upon, arising from or in consequence of, or in any way connected with any actual or alleged verbal, physical or sexual abuse, molestation, assault, battery or any violence committed by an **insured person**.

3.2 Alcohol, Illegal Drugs, Narcotics and Intoxicants

on account of any **claim** based upon, arising from or in consequence of **you** being under the influence of alcohol, illegal drugs, narcotics and intoxicants.

3.3 Assumed Liability

on account of any **claim** based upon, arising from or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to any liability which is, or would have been, implied by law in such agreement or would have separately arisen.

3.4 Bankruptcy or Insolvency

based upon, arising from or in consequence of the actual or alleged bankruptcy, insolvency, administration, or receivership of any **insured entity**.

3.5 Bodily Injury

on account of any **claim** based upon, arising from or in consequence of, directly or indirectly, the death of, or bodily injury, sickness, disease, death or emotional distress or mental anguish, of or illness to, any person, unless it results directly from the **insured's** provision of the **professional services**.

3.6 Cyber

on account of any **claim** based upon, arising from or in consequence of any intrusion due to the failure or the circumvention of the security of the **insured's** computer systems, which results in any unauthorised access, unauthorised use, hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage, deletion or disclosure of data (including data of a third party) stored on any computer system operated by the **insured**.

3.7 Directors & Officers Liability

- (a) on account of any **claim** brought against an **insured person** where such **claim** is made solely by reason of the person holding the position, or having acted in the position, of **director** or **officer**; or
- (b) on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by Sections 182, 183, 588G, 601FD, 601FE, 601JD of the *Corporations Act 2001* (Cth) or any similar law, and any amendments, consolidations or enactments of that Act, including duties of **directors, officers** and **employees** to not misuse their position or information, a **director's** duty to prevent insolvent trading, duties of a member of a scheme's compliance committee and the duties of **officers** and **employees** of a responsible entity.

3.8 Dishonest or Wilful Acts

on account of any **claim** based upon, arising from or in consequence of the:

- (a) dishonest, fraudulent or criminal acts, errors or failure to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

of an **insured**.

We will not rely on this Exclusion until the conduct in question is established by a final judgment, or any other final adjudication, or a written or verbal admission by any **insured** that the relevant conduct did in fact occur. This Exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001* (Cth) applies. This Exclusion will not apply in respect of cover afforded under Insuring Clause 1.2 (Employee Fidelity Cover).

3.9 Employment Liability

on account of any **claim** based upon, arising from or in consequence of an **employment practices wrongful act** or liability for any **personal injury** to an **employee**.

3.10 Insured versus Insured

on account of any **claim** brought or maintained by or on behalf of any **insured**.

3.11 Occupier's Liability

on account of any **claim** based upon, arising from or in consequence of the actual or alleged use, occupation, ownership, use, or lease of any real property, by or on behalf of an **insured**.

3.12 Prior Policy

based upon, arising from, in consequence of or attributable to any **claim** or circumstances of which notice has been given or was required to be given in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), under any policy of insurance which this **policy** renews, replaces or follows in whole or in part, or for which notice could have been given if such a policy had been in force.

3.13 Prior or Pending Proceedings

arising from any **claim** based upon, arising from or in consequence of any writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against the **insured** which existed prior to or were pending at the earlier of:

- (a) the inception date of this **policy**;
- (b) the original date upon which insurance providing like coverage to this **policy** was affected and continually maintained up to the inception date of this **policy**;

where such a **claim** arises from any matter, fact, situation or circumstance substantially the same as those underlying or alleged in any such claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment.

3.14 Products Liability

- (a) on account of any **claim** based upon, arising from or in consequence of the withdrawal or recall of any **products**;
- (b) involving any costs incurred in the repair, reconditioning, modification or replacement of any **product** or part of a **product** and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement; or
- (c) based upon, arising from or in consequence of the failure of a **product** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by **you**.

3.15 Property Damage

on account of any **claim** based upon, arising from or in consequence of, directly or indirectly, **property damage**, unless it results directly from the **insured's** conduct of the **professional services**.

3.16 Trading Debts

on account of any **claim** for any trading debt or business liability of an **insured** or any guarantee given by the **insured** for a debt.

3.17 Territorial Limits

- (a) on account of any **claim** brought and maintained; or
- (b) **direct financial loss** that occurs;

outside of the **territorial limits**.

3.18 Vehicles

- (a) arising from the ownership, possession or use by or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than claims arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- (b) arising from the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft or other vehicle, other than claims under the Insuring Clauses or the Extensions of Cover, arising from the emergency transportation of any patient accompanied by the **insured**.

3.19 Workmanship

- (a) on account of any **claim** based upon, arising from or in consequence of the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by **you** or on **your** behalf;
- (b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection with those services) by **you** or on **your** behalf.

Exclusions specific to Insuring Clause 1. 2 (Employee Fidelity Cover) only

3.20 Employee Fidelity Exclusions

We will not be liable under Insuring Clause 1.2 (Employee Fidelity) of this **policy** for any **direct financial loss**:

- (a) which can only be proved by:
 - (i) a profit and loss computation or comparison; or
 - (ii) a comparison of inventory records with an actual physical count;
- (b) arising from the accessing and dissemination of any confidential information, including but not limited to patents, trademarks, copyrights, customer information, computer programs and trade secrets;
- (c) arising from any **dishonest act** committed after any **director** or **officer**, **partner** or proprietor has become aware of a previous **dishonest act**, provided that this Exclusion will not apply if the **director** or **officer** or **partner** or proprietor who discovers any such **dishonest act**, acts in collusion with the **employee**;
- (d) arising from any **dishonest act** committed by a person who is either the proprietor or owns or controls more than 5% equity in the **policyholder**;
- (e) not directly associated with the incident that caused **you** to claim, including but not limited to loss of income, interest or dividends not realised or received by the **policyholder** or by any other person(s) or company because of a **direct financial loss**;
- (f) arising from any **dishonest act** committed by any **director** or **officer** or **partner** or proprietor, whether acting alone or in collusion with others;
- (g) arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like, unless the **direct financial loss** is a result of a **dishonest act** which results in the **employee** making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (h) arising from any extortion or kidnap and ransom;
- (i) by an **employee** (acting alone or in collusion with others) taking property from the **policyholder's** bank account (or other similar account held with an Authorised Deposit Taking Institution) where the **employee** is able to sign cheques, execute transfers or otherwise withdraw funds from such bank account (or other similar account held with an Authorised Deposit Taking Institution) without a second signatory or similar approval for that withdrawal by another **insured person** (or delegate of another **insured person**); or
- (j) arising from a failure of an **insured person** to independently verify a request by a payee (or an alleged payee) to change or redirect payment to a different bank account (or similar account held with an Authorised Deposit Taking Institution).

Exclusions specific to Insuring Clause 1.3 – Investigation Costs Cover and 1.4 – Statutory Liability Cover

3.21 Certain Acts

We will not be liable under Insuring Clause 1.3 (Investigation Costs Cover) and 1.4 (Statutory Liability Cover) of this **policy** to make any payment for any **loss** on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by the Fair Trading Acts of the States and Territories, the *Competition and Consumer Act 2010* (Cth) and any similar law of any State or Territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and

deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services.

SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

4.1 Act means any Act of any parliament or legislative assembly of the Commonwealth of Australia, and/or of any State or Territory of Australia, including any:

- (a) subordinate or delegated legislation or code, rules, regulations, or bylaws made under those Acts; and
- (b) any amendment, enactments, or consolidation of any of the above Acts or any successor, replacement or equivalent legislation.

4.2 Civil liability means the actual or alleged liability of the **policyholder** other than a criminal liability.

4.3 Claim means:

- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against an **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding, including but not limited to a conciliation, mediation or arbitration;
- (c) a writ, Statement of Claim, or other similar legal proceeding commenced in writing;
- (d) any formal written notice of an **extradition proceedings** or execution of a warrant for arrest against the **insured** alleging a **statutory liability wrongful act**, but only with respect to Insuring Clause 1.4 (Statutory Liability Cover); or
- (e) an **investigation**;

by a third party.

4.4 Costs means **investigation costs** and all reasonable fees, costs and expenses in the defence, investigation, adjustment, challenging, resisting or appeal of any **claim**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

Costs does not mean any overheads of an **insured entity** or **employment related benefits** associated with the remuneration of **insured persons**.

4.5 Court attendance costs means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured**, in relation to a covered **claim** under this **policy**.

4.6 Direct financial loss means loss of **property** sustained by the **policyholder** directly resulting from a **dishonest act**.

It does not include:

- (a) past or future economic loss, including the loss of salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**;
- (c) physical destruction to any **premises**, or to any property situated on the **premises**;
- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **direct financial loss** covered by this **policy**;
- (f) recovery costs;
- (g) interest or other loss that is not directly associated with the incident that caused **you** to claim;

- (h) the personal assets or property of an **insured** (for the avoidance of doubt, this includes an **insured's** property that would otherwise be covered under a home and contents policy); or
- (i) loss of property or other consideration surrendered or intended to be surrendered as payment or on behalf of an **insured person**, unless the **insured** agrees that such payment is on their behalf.

4.7 Director or officer means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of an **insured entity**;
- (b) a shadow director of an **insured entity** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) an **employee** of an **insured entity** who:
 - (i) carries out a managerial or supervisory function for the **insured entity**;
 - (ii) is joined as a party to any **claim** against any person defined above; or
- (d) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of an **insured entity** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of an **insured entity** or the assets of an **insured entity**.

4.8 Discovery period means the additional period in which **you** are able to notify **us** of a **claim** or **direct financial loss** resulting from conduct wholly committed before the end of the **insurance period**, the duration of which is specified in:

- (a) Extension 2.8 (Discovery Period following a change in exposure); or
- (b) Extension 2.9 (Discovery Period following non-renewal);

commencing from the date of expiry of the **insurance period**. The **discovery period** will be applied to this **policy** by way of Endorsement and will commence from the date of expiry of the **insurance period**.

4.9 Dishonest act means any fraudulent or dishonest act committed by an **employee** (acting alone or in collusion with others), which causes the **policyholder** to sustain a **direct financial loss**.

4.10 Documents means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms, client records and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data, but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument, or **property**.

4.11 Employee means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **insured** who is employed under a contract of service with the **insured** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **insured** under the direction and control of the **insured**;
- (c) students, who are doing work for the **insured**, at the **insured's** direction, regardless of whether they are paid, or not; or
- (d) in relation to Insuring Clause 1.2 (Employee Fidelity Cover), the **employee** must also be under the direction and control of the **insured**.

Employee does not include independent contractors or labour hire personnel.

4.12 Employment practices wrongful act means any actual or alleged violation of employment laws, workers compensation laws or any other employment related obligation or matter, including but not limited to any actual or alleged:

- (a) employment-related:
 - (i) sexual or other unlawful harassment (including bullying);
 - (ii) unlawful discrimination;
 - (iii) denial of natural justice;
 - (iv) defamation;
 - (v) invasion of privacy;
- (b) unlawful termination of employment;

- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices;
- (i) breach of employment contract; or
- (j) **personal injury**;

with respect to any natural person who was, now is or becomes an **employee** of the **policyholder**, including prospective **employee**.

4.13 Employment related benefits means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

4.14 Extradition proceedings means any action or proceeding commenced in any jurisdiction seeking the extradition of an **insured person**. Any such action or proceeding will be deemed for the purposes of this **policy** to commence upon the receipt by an **insured person** of notice in writing from an official governmental, regulatory or prosecuting body stating that a request for extradition of an **insured person** has been made or will be made.

4.15 Extranet means a restricted-access group of inter-connected electronic networks accessible via a gateway or portal.

4.16 Insured, you and your means:

- (a) the **policyholder**;
- (b) any **subsidiaries** of the **policyholder**; or
- (c) any **insured persons**.

4.17 Insured entity means:

- (a) the **policyholder**; and
- (b) any current **subsidiaries** of the **policyholder**.

4.18 Insured person means:

- (a) any **director** or **officer**;
- (b) **partner**; or
- (c) **employee**.

4.19 Internet means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.

4.20 Intranet means an electronic network owned and controlled by the **insured** which contains information about the business of the **insured** and is only accessible to designated individuals including **employees** of an **insured entity** and not to the general public.

4.21 Investigation means any formal investigation, inquiry or examination by an **official body**, commenced in writing, which the **insured** is:

- (a) legally compelled to comply with; or
- (b) requested to comply with and has the potential to have an adverse impact on the **insured's** ability to provide **professional services**.

An **investigation** does not include a risk management visit (or equivalent) by an **official body**.

4.22 Investigation costs means reasonable legal fees, costs and expenses incurred by the **insured** for their representation (or in preparation for their representation) at an **investigation** during the **insurance period** or, if applicable, the **discovery period**.

Investigation costs does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

4.23 Loss means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

Loss does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award in any **claim**;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) fines or penalties;
- (e) **employment related benefits**;
- (f) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices wrongful act** or the costs of reinstatement of any **employee**;
- (g) restitutionary loss, including any refund of fees;
- (h) internal or overhead expenses of any **insured**;
- (i) the cost of complying with any non-monetary order or non-monetary relief;
- (j) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw; or
- (k) liquidated damages.

4.24 Loss investigator means a suitably qualified forensic accountant or other consultant, who does not have a conflict of interest, retained to establish the nature and extent of any **direct financial loss**.

4.25 Lost documents means **documents** that cannot be located following a diligent search, or **documents** that have been destroyed or damaged.

4.26 Maximum aggregate limit of liability means the total amount payable under each Coverage Section of this **policy** as stated in the **schedule**, including all reinstatements.

4.27 Moderated site means any **internet**, **intranet** or **extranet** site where content is checked for compliance with pre-set content standards before or as soon as reasonably practicable after it is published.

4.28 Official body means any regulator, state or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **insured entity** or the conduct of an **insured person** in their insured capacity.

4.29 Open site means any **internet**, **intranet** or **extranet** site on which content can be published by contributing parties without registration.

4.30 Partner means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** in the business as specified in the **schedule**, in his or her capacity as such.

4.31 Personal injury means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

- 4.32 Premises** means the place or places where the **policyholder** conducts their business and provides **professional services**.
- 4.33 Product liability** means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** caused by or arising out of any **products** sold or otherwise supplied by **you** to a third party.
- 4.34 Products** means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **you** or on **your** behalf, including discontinued **products**.
- 4.35 Professional services** means the professional service provided by the **insured** as stated in the **schedule** and/or any endorsements and which the **insured** is licensed and or registered to provide, where licensing and/or registration is required by law.
- 4.36 Proof of loss** means documented evidence that the **policyholder** has sustained a **direct financial loss**. A **proof of loss** may include the following, however, these items should not be seen as limiting the information which could form part of the **proof of loss**:
- (a) the policy number of this **policy**;
 - (b) the name of the alleged perpetrator (if known);
 - (c) a description of the events which led to the **discovery** of the **direct financial loss**;
 - (d) a chronology of all relevant facts;
 - (e) a description of the alleged **employee** or third party's modus operandi;
 - (f) Statutory Declarations from witnesses;
 - (g) complete documentary evidence to support that the **policyholder** has sustained a **direct financial loss**, including but not limited to receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
 - (h) photographs, video or closed circuit television footage of **direct financial loss** occurring;
 - (i) any internal investigation reports;
 - (j) police report/s and/or any statement/s made to the police;
 - (k) a signed confession; and/or
 - (l) any other document or other form of evidence which may be relevant to the quantification of a **direct financial loss**.
- 4.37 Property** means money, securities and other property owned by the **policyholder** or for which it is legally liable. **Property** does not include the personal assets or property of the **policyholder** (for the avoidance of doubt this includes an **insured's** property that would otherwise be covered under another form of contents insurance).
- 4.38 Property damage** means physical loss, damage or destruction of tangible property owned by a third party, including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other **property**.
- 4.39 Proportionate costs** means the proportion of **loss** (excluding **costs**) that is paid under the **policy** in comparison to the total amount of **loss** (excluding **costs**).
- 4.40 Public relations costs** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).
- 4.41 Statutory liability wrongful act** means an actual or alleged breach of any **Act** in relation to the provision of **professional services**.
- 4.42 Technology services** means the following services:
- (a) website design;
 - (b) computer software programs, applications or systems;
 - (c) digital model, including Building Information Modelling (BIM) or other equivalent design systems;
 - (d) 3D printing technology; or

- (e) use of drones or unmanned aircraft, provided always that such use is performed by a Civil Aviation Safety Authority (CASA) licenced operator or an equivalent Authority, and is conducted in compliance with the relevant guidelines as specified by the Civil Aviation Safety Authority (CASA).



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