LAUW
LONDON AUSTRALIA UNDERWRITING

# NTAA Exclusive

**Professional Indemnity Policy**

**London Australia Underwriting Pty Ltd**

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The terms that appear in bold type are defined in Section 7 of this policy.

**Underwriters** agree to indemnify the **Insured** subject to the terms, conditions, limitations and exclusions in this policy.

1. **INSURING CLAUSES**

1.1 ***Civil Liability***

**Underwriters** shall indemnify the **Insured** against any **Claim** first made and **Notified** during the **Policy Period** and which arises out of the conduct of the **Insured's Business** by reason of any civil liability incurred by the **Insured** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

1.2 ***Defence Costs and Expenses***

**Underwriters** shall indemnify the **Insured** for all **Defence Costs and Expenses** in the defence, investigation and/or settlement of any **Claim** which falls to be dealt with under Insuring Clause 1.1 above and Automatic Extensions 3.3, 3.5 and 3.11, if applicable.

2. **LIMIT OF INDEMNITY AND EXCESS**

2.1 ***Limit of Indemnity (Any One Claim Basis)***

2.1.1 In respect of Insuring Clause 1.1 and all Automatic Extensions apart from Extensions 3.2, 3.4, 3.6 and libel and slander the **Limit of Indemnity** shall be the amount stated in item 4 of the **Schedule.**

2.1.2 In respect of Extension 3.2 (Costs Of Coronial Inquests etc) the maximum amount payable by **Underwriters** under this policy irrespective of the number of hearings and/or the number of **Insured's** shall be $100,000.

2.1.3 In respect of Extension 3.4 (Fidelity) the maximum amount payable by **Underwriters** under this policy irrespective of the number of dishonest or fraudulent acts, errors and/or omissions and/or the number of **Insured's** and/or the number of losses shall be $250,000.

2.1.4 In respect of libel and/or slander the maximum amount payable by **Underwriters** under this policy irrespective of the number of **Claims** and/or the number of **Insured's** shall be $250,000.

2.1.5 In respect of Extension 3.6 (Loss Of Documents) the maximum amount payable by **Underwriters** under this policy irrespective of the number of losses and/or the number of **Insured's** shall be $500,000.

2.1.6 The total liability of **Underwriters** during the **Policy Period** shall not exceed in the aggregate the sum specified in Item 4 of the **Schedule** for all **Claims** arising out of **Investment Business** irrespective of the number of **Claims** and/or the number of claimants and/or the number of **Insured's** and/or the number of Insuring Clauses and/or Automatic Extensions applicable;

2.1.7 The sub-limits in 2.1.2, 2.1.3, 2.1.4, 2.1.5 and 2.1.6 above and any further sub-limits provided by endorsement to this policy shall be part of and not in addition to the **Limit of Indemnity.**

2.1.8 Cover provided by Insuring Clause 1.2 (Defence Costs & Expenses) shall be in addition to the **Limit of Indemnity,** provided that:-

(a) if the amount paid or payable to dispose of any **Claim** is more than the **Limit of Indemnity** under this policy, then **Underwriters**' liability for **Defence Costs and Expenses** shall be limited to that proportion of the **Defence Costs and Expenses** as the **Limit of Indemnity** under this policy bears to the amount paid or payable in respect of such **Claim;**

(b) **Underwriters** shall be entitled but not obliged to tender the **Limit of Indemnity** to the **Insured** at any time, whereupon **Underwriters'** liability for **Defence Costs and Expenses** incurred after the date of tender shall cease.

2.2 ***Excess***

2.2.1 In respect of Insuring Clause 1.1 and all Automatic Extensions apart from 3.6 (Loss Of Documents), the **Excess** shall be the amount stated in item 5 of the **Schedule**.

2.2.2 In respect of Extensions 3.3 (Dishonesty and Fraud) and 3.4 (Fidelity), the **Excess** shall apply to each and every separate individual **Dishonesty**.

2.2.3 In respect of Extension 3.6 (Loss Of Documents), the **Excess** shall be $1,000 and a separate **Excess** shall apply to each and every separate loss.

2.2.4 If **Underwriters** at their election make any payment which is the responsibility of the **Insured** under this Clause 2.2, then the **Insured** shall forthwith repay such sum to **Underwriters** and, if the **Insured** fails to repay such sum, **Underwriters** shall have the right to set off such sum against any other monies due from **Underwriters** to the **Insured** under this policy.

2.2.5 A separate **Excess** shall apply to each and every **Claim.** However where there is more than one **Claim** arising out of or attributable to the same originating cause or source or the same act, error or omission, event or transaction or in any way related to such cause or source, act, error or omission, event or transaction, the **Excess** shall only be applied once.

2.2.6 In respect of **Investment Business** where there is more than one originating investor and/or claimant and/or policyholder and/or beneficiary in respect of any **Claim**, a separate **Excess** shall apply to each and every originating investor and each and every originating investor and/or claimant and/or policyholder and/or beneficiary.

## 3. AUTOMATIC EXTENSIONS

Each extension hereunder will apply automatically (unless otherwise stated in item 8 of the **Schedule**) and is subject to the terms, conditions, limitations and exclusions in this policy. None of the extensions shall increase the **Limit of Indemnity**.

### 3.1 *Continuity of Cover – A Renewal Benefit*

Notwithstanding Exclusion 4.12 (**Known Facts**), if the **Insured** was aware of any facts that might give rise to a **Claim** prior to the **Policy Period**, and **Underwriters** have not been notified by the **Insured** of such facts prior to the commencement of the **Policy Period**, then Exclusion 4.12 will not apply to a **Claim** resulting from the notification of such facts, provided that:

(a) the failure to notify such facts by the **Insured** was not a result of fraudulent misrepresentation or fraudulent non disclosure; and

(b) such facts had not previously been **Notified** to any other professional indemnity insurer; and

(c) **Underwriters** were the professional indemnity insurers of the **Insured** at the time the **Insured** became aware of such facts and have continued without interruption to be the **Insured's** professional indemnity insurer; but

(d) the limit of liability, sub-limits of liability and excesses under the policy in force when the **Insured** first became aware of such facts shall apply; and

(e) no indemnity shall be available for any **Claim** that is **Notified** after the **Policy Period;**

(f) **Underwriters** will reduce their liability to the extent of any prejudice suffered as a result of the **Insured's** failure to notify such facts giving rise to a **Claim** prior to the **Policy Period**.

### *3.2 Costs of Coronial Inquests/Disciplinary Hearings/Occupational Health and Safety Proceedings*

**Underwriters** shall indemnify the **Insured** for the reasonable legal costs incurred by the **Insured** (with **Underwriters** prior written and continuing consent) in attending:-

(a) any Disciplinary Enquiry before the **Insured**'s Professional Registration Board or other regulatory authority, any Coronial Enquiry that the **Insured** is compelled by law to attend; or

(b) any criminal or regulatory proceedings for a breach of an Occupational Health or Safety Law;

first commenced and **Notified** during the **Policy Period** and which arises out of the conduct of the **Insured's Business.**

3.3 ***Dishonesty and Fraud (Third Party Liability)***

Notwithstanding Exclusions 4.4 (Dishonesty) and 4.18 (Deliberate Acts), **Underwriters** shall indemnify the **Insured** against any **Claim** first made and **Notified** during the **Policy Period** and which arises out of the conduct of the **Insured's Business** by reason of **Dishonesty** on the part of any **Employee** (other than any director).

3.4 ***Fidelity (Own Losses)***

Notwithstanding Exclusions 4.4 (Dishonesty) or 4.18 (Deliberate Acts), **Underwriters** shall indemnify the **Insured** for any **Loss of Money** where such **Loss of Money** is sustained as a result of any **Dishonesty** by an **Employee** committed in the conduct of the **Insured's Business.**

3.5 ***Joint Venture Liability***

**Underwriters** shall indemnify the **Insured** against any **Claim** first made and **Notified** during the **Policy Period** and which arises out of the conduct of the **Insured's Business** within any association or joint venture arrangement by reason of any civil liability committed by the **Insured**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured** other than their joint venture partner(s) but only if such association or joint venture arrangement has been disclosed to and accepted by **Underwriters** as being subject to indemnity under this policy. **Underwriters** shall not be liable to pay any **Claim** made by any associated party within the association or joint venture unless such **Claim** emanates in it's entirety from a wholly independent third party.

3.6 ***Loss of Documents***

**Underwriters** shall indemnify the **Insured** for reasonable and necessary costs, incurred with **Underwriters'** prior written and continuing consent, of repair, replacement and/or reconstitution of any **Document** which has been unintentionally destroyed, damaged, lost or mislaid during the **Policy Period** (and which after diligent search cannot be found) provided that:-

(a) the discovery of which has occurred and has been **Notified** during the **Policy Period;** and

(b) such destruction, damage, loss or misplacement has occurred within Australia or New Zealand (or whilst in transit between Australia and New Zealand); and

(c) any **Document** kept in magnetic or electronic form is duplicated and the duplicate is stored at a separate address as a back up.

3.7 ***Newly Created or Acquired Subsidiaries***

**Underwriters** agree to extend the definition of **Insured** to include any newly acquired or created **Subsidiary** of the person, partnership, company or other entity stated in item 1 of the **Schedule** which occurs during the **Policy Period** provided that coverage does not extend to any **Claim** arising from an act, error or omission of the **Subsidiary** occurring before the person, partnership, company or other entity stated in item 1 of the **Schedule** acquired or created the **Subsidiary** or after the **Subsidiary** ceased to be a **Subsidiary** of the person, partnership, company or other entity stated in item 1 of the **Schedule.** However, this extension only applies if such **Subsidiary** has been disclosed to and accepted by **Underwriters** as being subject to indemnity under this policy, and at the sole discretion of **Underwriters**, an appropriate additional premium has been charged.

3.8 ***Prior Corporate Entity***

**Underwriters** agree to extend the definition of **Insured** to include any corporate entity noted in the **Schedule** through which the **Insured** previously traded provided always that such entity has been disclosed to and accepted by **Underwriters** as being subject to indemnity under this policy.

3.9 ***Run-Off Cover***

**Underwriters** agree that in the event that an **Insured** entity ceases to exist or is merged into or acquired by another entity then the coverage provided under this policy shall continue until the expiry of the **Policy Period**, provided that this cover will only apply to any actual or alleged act, error, omission, and/or event committed or occurring prior to the date that the **Insured** entity ceased to exist or was merged into or acquired by another entity.

3.10 ***Severability and Non-imputation***

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If **Underwriters** agree to insure more than one party under the policy, then any non-disclosure, misrepresentation or other failure to comply with any terms or conditions of the policy by one party shall not prejudice the rights of the remaining parties to indemnity, provided that the remaining parties had no prior knowledge (or should not reasonably have had prior knowledge) of such non-disclosure, misrepresentation or other failure to comply. The onus of proving that this extension should apply shall be upon the **Insured**.

3.11 ***Trade Practices***

In respect of the conduct of the **Insured's Business, Underwriters** shall indemnify the **Insured** against any **Claim** first made and **Notified** during the **Policy Period** and which arises from an unintentional breach of the *Trade Practices Act 1974* or similar state or territory legislation of Australia or New Zealand.

3.12 ***Waiver Of Subrogation Against Named Consultants***

**Underwriters** shall not exercise any rights of subrogation as provided under clause 5.3 against any **Named Consultant** unless the loss in respect of which indemnity is provided under this policy was caused or contributed to by **Dishonesty** or by a malicious act, malicious error or malicious omission by the **Named Consultant**.

3.13 ***Australian Auditing Standards***

**Underwriters** shall indemnify the **Insured** against any **Claim** first made and **Notified** during the **Policy Period** for any civil liability arising out of any failure by the **Insured** to conduct an audit in accordance with the auditing standards prescribed by the *Corporations Act* 2001 (or as amended from time to time), provided that:

(a) the **Claim** has not arisen due to any fraudulent, dishonest, reckless or wilful act of an **Insured**, **Subsidiary**, sub-contractor, agent or **Named Consultant**.

## 4. EXCLUSIONS

**Underwriters** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way involving:-

4.1 ***Bodily Injury & Property Damage***

(a) Bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person; and/or

(b) Any damage to or destruction or loss of any property (except as provided under Extension 3.6) including but not limited to loss of use;

unless directly arising from alleged **Negligence** committed by the **Insured** or by any other person, firm or company directly appointed by and acting on behalf of the **Insured** which arises out of the conduct of the **Insured's Business**.

4.2 ***Confidentiality, Copyright, Libel and Slander (Intentional)***

(a) Any breach of confidentiality, unless the breach of confidentiality was unintentional.

(b) Any infringement of copyright, design right, registered design, trademark or patent, unless the infringement was unintentional.

(c) Any libel or slander, unless arising from written or verbal communication made in good faith by the **Insured** or by any **Employee**.

4.3 ***Director and Officer***

Any liability incurred as an actual or *de facto* director or officer of the **Insured** or as an actual or *de facto* director, officer or trustee of any other company or trust in their capacity as such.

4.4 ***Dishonesty***

Any **Dishonesty** committed, condoned or contributed to by any partner, director or principal of the **Insured**, or committed, condoned or contributed to by any person after the discovery of **Dishonesty** or of reasonable cause for suspicion of **Dishonesty** in relation to that person. Furthermore, no person or persons committing, condoning or contributing to any **Dishonesty** shall be entitled to an indemnity under this policy. In the event of a **Claim** or **Loss of Money** as a result of any **Dishonesty**, the indemnity under this policy shall be reduced by an amount equal to the sum of:

(a) any monies owed by the **Insured** to any person committing, condoning or contributing to the **Dishonesty**;

(b) any monies held by the **Insured** and belonging to such person; and

(c) any monies recovered in accordance with condition 5.3 of this policy.

4.5 ***Employer Liability/ Workers' Compensation***

Any breach of any obligation owed by the **Insured** as an employer to any **Employee** or former **Employee** or applicant for employment and/or any liability for which the **Insured** is or would be entitled to an indemnity under any policy of insurance, scheme or fund pursuant to any legislation relating to workers compensation, irrespective of whether such insurance has been effected.

4.6 ***Fines and Penalties***

Any fines, penalties, or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages.

4.7 ***Goods and Services***

Any contract for the provision of goods or services to the **Insured**; or any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured**, unless such **Claim** is a direct result of the negligent design and/or negligent specification of the **Insured** or any other person firm or company directly appointed by and acting for or on behalf of the **Insured**. For the avoidance of doubt, negligence cover defined above shall not apply to any software produced by a third party that is marketed for general distribution on a wholesale or retail basis unless such software has been amended or adapted by the **Insured** and such amendment or adaptation arises out of the conduct of the **Insured's Business.**

4.8 ***Gradual Wear & Tear***

Any **Documents** that have been destroyed, damaged or lost due to wear, tear or other gradually operating causes.

4.9 ***Information Technology***

Any of the following:

(a) the failure of any computer or other electronic processing device or of any program, instruction or data for use in any computer (except as provided under extension 3.6) or other electronic processing device, equipment or system to function in the way expected or intended; and/or

(b) the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance; and/or

(c) business conducted and/or transacted via the **Internet**, **Intranet**, **Extranet** and/or via the **Insured**'s own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means. This exclusion shall not apply if the **Insured** can prove, to the reasonable satisfaction of **Underwriters**, that the liability to the **Insured** would have attached to the same extent in the absence of the fact that the business was conducted and/or transacted via the **Internet**, **Intranet**, **Extranet** and/or via the **Insured**'s own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means.

4.10 ***Investment Related***

Any:-

(a) express or implied warranty or guarantee relating to the financial performance of any investment or portfolio of investments; and/or

(b) depreciation or loss of investment, which arises from fluctuations in any financial stock or commodity or other market; and/or

(c) the provision of any financial service by the **Insured** where the **Insured** is required to be authorised or licensed in accordance with Part 7 of the Corporations Act 2001, unless the **Insured** holds a current licence for the provision of the financial service as required by the Corporations Act 2001.

(d) any referral by the **Insured** to a financial planner or provider of financial services, unless the financial planner or provider of financial services is authorised or licensed in accordance with Part 7 of the Corporations Act 2001.

4.11 ***Jurisdiction and Territorial Limits***

Any:

(a) legal proceedings, wherever brought, under the laws of the USA and/or Canada or brought under the laws outside the USA and/or Canada to enforce a judgment or order made under the laws of the USA and/or Canada and/or;

(a) liability arising from the **Insured's Business** undertaken within the USA and/or Canada and/or;

(b) coronial inquests, disciplinary hearings, or occupational health and safety proceedings brought outside Australia or New Zealand.

4.12 ***Known Facts***

(a) Any facts which could give rise to a **Claim** against the **Insured** and which facts were known or ought reasonably to have been known by the **Insured** at any time prior to the **Policy Period** and/or;

(b) Any facts notified to a previous Professional Indemnity and/or Professional Liability insurance policy and/or

(c) Any **Claim,** or facts which could give rise to a **Claim** against the **Insured** referred to or detailed in the **Proposal.**

4.13 ***Land, Vehicles & Property***

The ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile).

4.14 ***Minimum Cheque Signing***

The issue by or on behalf of the **Insured** of any cheque or money transfer bearing less than two authorised signatories unless such cheque or money transfer is for an amount of less than $10,000.

4.15 ***Nuclear, War & Terrorism***

Any of the following:

(a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;

(b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;

(c) discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

(d) Any **Terrorist Action** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorist Action**.

4.16 ***Other Insurance***

Any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to indemnity under any other contract of insurance, except where such other insurance is written as specific excess insurance to provide an indemnity in excess of the amount payable under this policy.

4.17 ***Pollution, Contamination & Asbestos***

Any of the following:

(a) Any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould (including but not limited to toxic mould), fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

(b) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(c) Asbestos.

4.18 ***Deliberate Acts***

Apart from cover afforded under extension 3.3 (Dishonesty & Fraud) and 3.4 (Fidelity), any **Dishonesty** or any criminal, malicious or wilful act, criminal, malicious or wilful error or criminal, malicious or wilful omission by the **Insured** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured.**

4.19 ***Related Companies***

Any **Claim** brought by or on behalf of:-

(a) The **Insured**;

(b) Any parent or **Subsidiary** of the **Insured;**

(c) Any person or entity having an executive, **Financial Interest** or controlling interest in the **Insured**;

(d) Any entity where the **Insured** has accepted a share in the ownership of any entity in exchange for fees incurred (irrespective of the value);

(e) Any entity within the same group of companies as the **Insured.**

4.20 ***Retroactive Date***

Any actual or alleged act, error, omission, and/or event committed or occurring prior to the Retroactive Date (if any) specified in item 6 of the **Schedule**, including but not limited to any ongoing duty to warn or otherwise advise in respect of an actual or alleged act, error, omission, and/or event committed or occurring prior to the Retroactive Date (if any) specified in item 6 of the **Schedule**.

4.21 ***Trading Losses***

Any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf of the **Insured.**

4.22 ***Warranties and Guarantees***

(a) any performance warranty, guarantee, penalty clause, liquidated damages clause or similar provision unless the **Insured** can establish to **Underwriters**' reasonable satisfaction that the liability of the **Insured** would have existed to the same extent in the absence of such warranty, guarantee or clause or similar provision.

(b) any collateral warranty agreement which extends the liability of the **Insured** beyond that which would have existed in the absence of such collateral warranty. For the avoidance of doubt, this exclusion shall not restrict the number of parties with whom the **Insured** may enter into a collateral warranty.

4.23 ***Radioactive Contamination and Explosive Nuclear Assemblies***

Any:-

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;

(b) any legal liability of whatsoever nature.

directly or indirectly caused by or contributed to by or arising from

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

(ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## 5. CLAIMS CONDITIONS

5.1 ***Duty to Co-operate***

The **Insured** must (at the **Insured**'s own expense):-

(a) promptly provide to **Underwriters** full details concerning any **Claim** and/or **Loss of Money** and/or any matter(s) where the **Insured** has requested to be indemnified under this policy;

(b) promptly provide such co-operation and assistance as **Underwriters** and their representatives, legal advisers and/or agents may reasonably require;

(c) ensure that all **Document**s relevant to any **Claim** and/or **Loss of Money** are preserved in their entirety and are not in any way destroyed or otherwise disposed of or passed on to any third party except for their legal advisers without the prior written consent of **Underwriters**;

(d) exercise due diligence and do all things reasonably practicable to reduce or mitigate any actual or potential **Claim** and/or **Loss of Money;**

(e) provide satisfactory proof to **Underwriters** substantiating any **Loss of Money**, including the cost of any legal, investigative or accounting costs;

(f) provide **Underwriters** with all information and assistance that may be sought in order to effect any recovery of the **Loss Of Money**.

5.2 ***Notification***

The **Insured** must ensure that **Underwriters** are **Notified** as soon as practicable and during the **Policy Period**:

(a) of any **Claim**;

(b) of any unintentional destruction, damage, or loss of **Documents** of which the **Insured** becomes aware which is (or are) likely to give rise to an entitlement to indemnity under extension 3.6;

(c) of any **Loss of Money;**

(d) of any request for indemnity under Insuring Clause 3.2 (Costs of Coronial Inquests etc).

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Such notification shall include full details of the act, error or omission, transaction or event giving rise to the **Claim** and/or loss and/or request for indemnity including the date of such act, error or omission, transaction or event; the name(s) of the person(s) responsible for such act, error or omission, transaction or event; the name(s) of the likely claimant(s) and the amount of the likely **Claim** and/or loss.

5.3 ***Subrogation***

**Underwriters** shall be subrogated to all the rights of recovery of the **Insured** against any third party before or after any indemnity is given under this policy. The **Insured** shall, promptly and without charge, provide such assistance as **Underwriters** may reasonably require in any subrogation.

5.4 ***Underwriters Entitled to Defend & No Admission Of Liability***

(a) **Underwriters** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any matter(s) where the **Insured** has requested to be indemnified under this policy. If the **Insured** do not agree with any proposals by **Underwriters** to settle any **Claim**, then **Underwriters'** liability for such **Claim** shall be limited (subject always to the **Limit of Indemnity**) to the amount for which in **Underwriters**' reasonable opinion the **Claim** could have been settled at the date at which **Underwriters** proposed it should be settled, and **Underwriters'** liability for **Defence Costs and Expenses** shall be limited to **Defence Costs and Expenses** incurred up to that date.

(c) The **Insured** (or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of **Underwriters**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim**.

(c) The **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel or Counsel of not less than 15 years' standing (to be mutually decided upon by **Underwriters** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

6. **GENERAL CONDITIONS**

6.1 ***Alteration of Risk***

(a) In the event of a material change in the **Insured's Business**, or any act of insolvency or bankruptcy of the **Insured** or any proposed or actual sale of the business or merger with another entity, or any other material change in the potential exposure of the risk to the **Insured**, the **Insured** must give **Underwriters** written notice as soon as is practicable after becoming aware of such alteration which may affect **Underwriters** risk under this policy.

(b) In the event of such change in material risk, **Underwriters** shall be entitled at its sole discretion to charge an additional premium, the amount of which shall also be at its sole discretion.

(c) **Underwriters** may also be entitled to cancel this policy in accordance with the provisions of the *Insurance Contracts Act 1984* upon receipt of such notice or where there is a material alteration to the risk.

6.2 ***Avoidance by Underwriters***

Subject to the operation of the *Insurance Contracts Act 1984*, if **Underwriters** are entitled, for any reason, to avoid this policy *ab initio*, **Underwriters** may at their absolute discretion elect instead to give notice to the **Insured** that it regards this policy as being in full force and effect, except that no indemnity will be given under this policy that arises from or is related to the ground(s) that entitled **Underwriters** to avoid this policy.

6.3 ***Cancellation***

(a) **Underwriters** may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984*,

(b) If **Underwriters** elect to cancel the Policy as described in 6.3(a), a pro-rata refund of **Premium** may be made at **Underwriters** discretion for the unexpired part of the **Policy Period** (less any non-refundable duties).

6.4 ***Disclosure of Information by Insured***

The **Insured** agrees to waive any claim for legal professional privilege in respect of any information provided to **Underwriters** from any legal representatives appointed by **Underwriters** to act on the **Insured's** behalf.

6.5 ***Governing Law and Disputes***

This Policy shall be governed by and construed in accordance with the laws of Australia. The courts of Australia will have the jurisdiction in any dispute about or under this Policy.

6.6 ***GST***

Any payment made by **Underwriters** under this Policy will be reduced by the amount of any Input Tax Credit to which the **Insured** is entitled for the GST in accordance with the provisions of A New Tax System (Goods and Services Tax) Act 1999.

6.7 ***Interpretation***

In this Policy:

(a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy;

(b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;

(c) the headings herein are for reference only and shall not be considered when determining the meaning of this Policy.

6.8 ***Proposal Form***

The **Proposal** submitted by the **Insured** to **Underwriters** shall be the basis of, and be incorporated into, this policy.

6.9 ***Several Liability***

The obligations of each insurance company and Lloyd's syndicate (including the underwriters thereof) shall be several and not joint and shall be solely to the extent of that company's or syndicate's individual subscription. No such company or syndicate shall be responsible for the subscription of any other such company or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

6.10 ***Premium Payment***

(a) As a condition precedent to the right to be indemnified under this policy the **Insured** undertakes that **Premium** will be paid in full to London Australia Underwriting Pty Limited within sixty days of inception of this policy (or, in respect of instalment premiums, when due).

(b) If the **Premium** has not been so paid by the sixtieth day from the inception of this policy (and, in respect of instalment premiums, by the date they are due) London Australia Underwriting Pty Limited shall have the right to cancel this policy ab initio by notifying the **Insured** via its insurance agent in writing. In the event of cancellation, premium is due to **Underwriters** on a pro rata basis for the period that **Underwriters** are on risk but the full policy **Premium** shall be payable to **Underwriters** in the event that any **Claim**(s) or loss(es) are **Notified** prior to the date of termination.

7. **DEFINITIONS**

7.1 "**CLAIM**" means any financial demand, or assertion of a financial right against, the **Insured**, which is communicated in writing to the **Insured.**

7.2 **"DEFENCE COSTS AND EXPENSES"** means legal costs and expenses reasonably incurred by or on behalf of the **Insured** with the prior written and continuing consent of **Underwriters**. It does not include the **Insured**'s own costs and expenses.

7.3 **"DISHONESTY"** means any actual or alleged dishonest or fraudulent act, dishonest or fraudulent error or dishonest or fraudulent omission.

7.4 **"DOCUMENT"** means all records arising from the **Insured's Business**, whether kept in paper, magnetic or electronic form (but excluding any records which have been received by e-mail unless they have been downloaded to the **Insured**'s own files) belonging to the **Insured** or for which the **Insured** is legally responsible (but excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like), whilst in the custody of the **Insured**, in the ordinary course of the **Insured's Business**.

7.5 *"***EMPLOYEE***"* means any natural person, other than a partner or principal of the firm(s) or company/(companies) stated in item 1 of the **Schedule**, who is under a contract of service or apprenticeship with the firm(s) or company/(companies) stated in item 1 of the **Schedule**, or under any work experience or similar scheme, whilst such person(s) are employed or engaged by and under the control of the firm(s) or company/(companies) stated in item 1 of the **Schedule** in connection with the **Insured's Business**.

7.6 **"EXCESS"** means the amount payable by the **Insured** (**Underwriters** shall only be liable to the extent that any liability (or loss indemnified under Automatic Extension 3.6 or **Loss Of Money**) exceeds the **Excess)**.

7.7 **"EXTRANET"** means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

7.8 **"FINANCIAL INTEREST"** means direct or indirect control or ownership of 5% or more of the issued share capital and/or options of any entity, company or enterprise.

7.9 **"INSURED"** means:-

(a) the person, partnership, company or other entity stated in item 1 of the **Schedule;**

(b) any person who is a current principal, partner or **Employee** of any person or entity named in item 1 of the **Schedule;**

(c) any former principal, partner or **Employee** of any person or entity named in item 1 of the **Schedule,** but only in respect of work undertaken for and on behalf of the firm(s) or company/(companies) stated in item 1 of the **Schedule;**

(d) the estate, heirs, legal representatives or assigns of any of 7.9 (b) or 7.9 (c) above who is deceased or legally incapacitated but only in respect their status as the estates, heirs, legal representatives or assigns of such assignees.

7.10 **"INSURED'S BUSINESS"** means the professional services performed or the advice given by the **Insured** in relation to those activities declared in the **Proposal**.

7.11 **"INTERNET"** means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

7.12 **"INTRANET"** means one or more inter-connected networks with restricted access to the **Insured** and/or to any other person, firm or company directly appointed by and acting for or on behalf of the **Insured,** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

7.13 **"INVESTMENT BUSINESS"** means any investing of money or capital, and/or advice given in relation to the investing of money or capital.

7.14 **"LIMIT OF INDEMNITY"** means the maximum amount payable by **Underwriters** in respect of any one **Claim** (or **Claim(s)** arising out of or attributable to the same originating cause or source or the same act, error or omission, event or transaction or in any way related to such cause or source, act, error or omission, event or transaction) under this policy irrespective of the number of claimants and/or the number of **Insureds** and/or the number of Insuring Clauses and/or Automatic Extensions applicable**.**

7.15 **"LOSS OF MONEY"** means any physical loss, damage or destruction, theft or misappropriation of any money, bank note, negotiable instrument, bearer bond, coupon, stamp or currency note belonging to the entity stated in item 1 of the **Schedule**, or for which the **Insured** is legally responsible in the ordinary course of the **Insured's Business**.

7.16 **"NAMED CONSULTANT"** means any natural person acting as a consultant to the **Insured**, whose name is agreed in writing by **Underwriters**.

7.17 "**NEGLIGENCE"** means any actual or alleged negligent act, negligent error or negligent omission.

7.18 **"NOTIFIED"** means that notice is sent in writing by the **Insured** (or its insurance agent) to, and received by, London Australia Underwriting Pty Limited on behalf of **Underwriters**.

7.19 **"POLICY PERIOD"** means the period stated in item 2 of the **Schedule**.

7.20 **"PREMIUM"** means the amount stated in item 3 of the **Schedule**.

7.21 **"PROPOSAL"** means the written information bearing the date stated in item 7 of the **Schedule** together with any other information supplied to **Underwriters**.

7.22 **"SCHEDULE"** means the document entitled "**Schedule**" that relates to this policy.

7.23 **"SUBSIDIARY"** means any entity over which the firm can exercise effective financial control or direction, or is otherwise deemed to be a **Subsidiary** by operation of any applicable law or legislation.

7.24 **"TERRORIST ACTION"** means the actual or threatened:

(a) use of force or violence against persons or property, or

(b) commission of an act dangerous to human life or property, or

(c) commission of an act that interferes with or disrupts an electronic or communications system

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority, or military force, when any of the following applies:

(i) the apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy; or

(ii) the apparent intent or effect is to cause alarm, fright, fear of danger, or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments; or

(iii) the apparent intent or effect is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

7.25 **"UNDERWRITERS"** means London Australia Underwriting Pty Limited on behalf of A G Dore & Others Lloyds Syndicate 2526 and any other participating Lloyd's syndicates and/or insurance companies. Syndicate 2526 is managed by Max at Lloyd's Ltd which is situated in England at 4th Floor, 70 Gracechurch Street, London EC3V 0XL.

## 8. IMPORTANT NOTICES

### Your Duty of Disclosure

In accordance with the provisions of the *Insurance Contracts Act 1984*, you have a duty to disclose to **Underwriters** every matter that you know, or could reasonably be expected to know, is relevant to **Underwriters** decision whether to accept the risk of the insurance and, if so, on what terms.

This duty does not require disclosure of matters that diminish the risk to be undertaken by **Underwriters**, that are common knowledge, or that **Underwriters** know or, in the ordinary course of its business, should know, or as to which compliance with your duty is waived by **Underwriters**.

It should be noted that this duty continues until the **Policy** is entered into with **Underwriters**, and extends to any renewal, reinstatement, variation or extension to the **Policy**.

**Non-Disclosure**

**Underwriters** may be entitled to either reduce its liability under the contract in respect of a **Claim**, cancel the contract or avoid the contract from its beginning in accordance with the provisions of the *Insurance Contract Act 1984* if you fail to comply with your duty of disclosure, or if any non-disclosure is fraudulent.

**Continuity Clause**

Where the word "policy" appears herein, the word "certificate" shall be deemed to be substituted therefore where the context allows.

**Service of Suit**

**Underwriters** hereon agree that:

(a) in the event of a dispute arising under this Insurance, the **Underwriters** at the request of the **Insured** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

(b) any summons notice or process to be served upon the **Underwriters** may be served upon the Lloyd's General Representative in Australia, Suite 2, Level 21 Angel Place, Sydney NSW 2000, who has authority to accept service and to enter an appearance on the **Underwriters**' behalf, and who is directed at the request of the **Insured** to give a written undertaking to the **Insured** that he will enter an appearance on the **Underwriters**' behalf.

(c) If a suit is instituted against any one of the **Underwriters**, all **Underwriters** hereon will abide by the final decision of any such Court or any competent Appellate Court.

**General Insurance Code of Practice**

This **Policy** is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Any enquiry or complaint relating to this Insurance should be referred to **Underwriters** in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to the Lloyd's Underwriters' General Representative in Australia, Suite 2, Level 21, Angel Place, 123 Pitt Street, Sydney, NSW 2000, who will refer your dispute to the Complaints Department at Lloyd's. Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

**Privacy Notice**

In order for **Underwriters** to provide you with insurance products and the processing of claims, it is necessary to obtain personal information from you. **Underwriters** are bound by the provisions of the *National Privacy Principles* as set out in the *Privacy Act (Cwlth) 1988*.

You may elect not to provide **Underwriters** with this information, however, this may prevent **Underwriters** from providing you with the products or services sought.

**Underwriters** may disclose this information to other insurers, re-insurers, an insurance reference service, or other advisers used by **Underwriters** such as loss adjusters, lawyers or others who may be engaged to assist in claims handling, underwriting or for the purpose of fulfilling compliance and/or regulatory requirements. These third parties will all be contractually required to adhere to **Underwriters** privacy obligations.

Should you require access to your personal information, **Underwriters** may be contacted on (02) 8912 6400.