

POLICY SCHEDULE & WORDING

Professional Indemnity Insurance Policy
for Accountants
(Defence Costs in Addition)

libertyinternational.com/au



Important notice

Please note that the **Policy** provides insurance on a Claims Made basis. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. This **Policy** may contain a retroactive date exclusion by endorsement.

The **Insured** should carefully read all of the **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by the **Policy**. The Insured is advised to consult its insurance adviser to ensure a clear understanding of the **Insured's** rights and obligations under the **Policy**.

Specimen



Policy schedule

POLICY NUMBER PL-XX-SPC-0X-XXXXXX

NAMED INSURED

ADDRESS OF INSURED

POLICY PERIOD From: 4.00pm on XX.XX.XXXX local standard time
To: 4.00pm on XX.XX.XXXX local standard time

LIMIT OF LIABILITY \$X,000,000

SUB-LIMITS OF LIABILITY Extension 2.15 Loss of Documents \$X,000
Extension 2.18 Professional Inquiries \$X,000
Extension 2.19 Public Relations Costs \$X,000
Optional Extension 3.2 Fidelity \$X,000

EXCESS \$X,000

POLICY WORDING Liberty AUS OQS PI Accountants DCA Policy Wording (03-11)

OPTIONAL EXTENSIONS	3.1 Contractual Liability	Included/Not Included
	3.2 Fidelity	Included/Not Included
	3.3 Reinstatement	Included/Not Included

ENDORSEMENTS

CONTINUITY DATE

ADDITIONAL INSURANCE

This policy is valid only if this schedule is signed and dated below by a person authorised by **Liberty**.

Issued <day> <month> <year> in <office location>

AUTHORISED BY LIBERTY

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Professional Indemnity Insurance for Accountant

In consideration of payment of the **Premium** by the **Named Insured** and subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, **Liberty** agrees as follows:

1. Insuring Clauses

1.1 Professional Liability

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services**.

1.2 Advancement of Defence Costs

Liberty will pay for **Defence Costs** in respect of a **Claim** covered under Insuring Clause 1.1 or under any applicable extension. **Liberty** will pay for these **Defence Costs** as and when they are incurred prior to final resolution of the **Claim**.

However, each **Insured** shall repay to **Liberty** all payments of **Defence Costs** incurred on that **Insured's** behalf if and to the extent it is established that such **Defence Costs** are not insured under the **Policy**.

Defence Costs are subject to the **Excess** and are payable in addition the **Limit of Liability**. However, in the event that the total amount of **Defence Costs** and other amounts insured under the **Policy** required to dispose of any one **Claim** exceeds the **Limit of Liability** available for such **Claim**, **Liberty** will only pay for **Defence Costs** in the same proportion as the **Limit of Liability** available for such **Claim** bears to the total amount required to dispose of such **Claim**.

2. Extensions

Subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, **Liberty** further agrees to extend cover provided under the **Policy** as follows:

2.1 Breach of Accounting & Auditing Standards

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging breach of accounting standards made under s334 and auditing standards made under s336 of the Corporations Act (Cth) 2001.

2.2 Breach of Confidentiality

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging breach of confidentiality by the **Insured**.

Professional Indemnity Insurance for Accountants

2.3 Competition & Consumer Act

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** under the terms of the Competition & Consumer Act 2010 (Cth) as amended from time to time, or any Fair Trading legislation of any State or Territory of the Commonwealth of Australia.

2.4 Continuous Cover

If the **Insured** was aware of any facts that might give rise to a **Claim** or **Professional Inquiry** arising from the performance of **Professional Services** prior to the commencement of the **Policy Period** and had not notified **Liberty** of such facts prior to the commencement of the **Policy Period**, then Exclusion 4.18(b) in respect of "Prior Matters" will not apply to the notification of a **Claim** or **Professional Inquiry** resulting from such facts, provided that:

- (a) the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by the **Insured**;
- (b) the **Insured** first became aware of such facts after the **Continuity Date**; and
- (c) **Liberty** will reduce its liability to the extent of any prejudice suffered as a result of the **Insured's** failure to notify such facts prior to the commencement of the **Policy Period**.

2.5 Deemed Employees

The definition of **Insured** in Definition 7.7 is extended to include any contractor or consultant who is a "deemed worker" under the workers' compensation laws of the State or Territory of the Commonwealth of Australia in which the contractor or consultant is performing **Professional Services** and has a written contract with the **Named Insured** or its **Subsidiaries** to perform **Professional Services**, but only in relation to the performance of **Professional Services** for or on behalf of the **Named Insured** or its **Subsidiaries**.

2.6 Defamation

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging any libel, slander, defamation or injurious falsehood by the **Insured**. No cover is provided under this extension for any **Claim** arising from any intentional libel, slander, defamation or injurious falsehood.

2.7 Extended Policy Period

If a **Change in Control** occurs during the **Policy Period** then the **Named Insured** may request an extended policy period of up to 84 months commencing from the end of the **Policy Period** during which time the **Insured** may notify any claim to **Liberty** provided it results from **Professional Services** performed prior to the effective date of the **Change in Control**.

The **Named Insured** must request this extended policy period in writing before the end of the **Policy Period**. **Liberty** will offer this extended policy period on such terms and conditions and for such additional premium as **Liberty** may reasonably impose.

An extended policy period granted under this extension shall be non-cancellable and any additional premium paid shall be non-refundable.

This extension is subject to the **Limit of Liability**, the **Sub-Limits of Liability** and the **Excess** and does not apply if the **Policy** is cancelled or avoided by **Liberty**.

Professional Indemnity Insurance for Accountants

2.8 External Appointments

Notwithstanding Exclusion 4.11 in respect of “Management Liability” and Exclusion 4.20(c) in respect of “Related Parties”, **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** where a director, partner or employee of the **Named Insured** or its **Subsidiaries** has been appointed for a fee in the capacity of a receiver, receiver and manager, administrator or liquidator of an entity except for:

- (a) the **Named Insured** or its **Subsidiaries**; or
- (b) any entity which is owned by any **Insured**.

2.9 Fraud & Dishonesty

Notwithstanding Exclusion 4.7 in respect of “Fraud & Dishonesty”, **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging fraudulent or dishonest conduct by the **Insured** or their **Agent**.

However, no cover is provided under this extension:

- (a) to any person, company or other entity who has committed or condoned the fraudulent or dishonest conduct; or
- (b) in respect of a **Claim** arising from or in any way connected with loss of **Money**.

2.10 Implied Warranties & Conditions

Notwithstanding Exclusion 4.4(a) in respect of “Contractual Liability & Commercial Risks”, **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and/or the terms of the Competition & Consumer Act 2010 (Cth), as amended from time to time, or any similar Fair Trading legislation of any State or Territory of the Commonwealth of Australia.

2.11 Intellectual Property Rights

Notwithstanding Exclusion 4.9 in respect of “Intellectual Property Rights”, **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging infringement of **Intellectual Property Rights** by the **Insured**.

However, no cover is provided under this extension for any **Claim**:

- (a) resulting from any intentional infringement of **Intellectual Property Rights**; or
- (b) arising out of or in any way connected with:
 - (i) legal or regulatory proceedings brought within the United States of America, Canada or any of their territories or protectorates or in which the laws of those countries are applicable, even if only to a limited extent; or
 - (ii) the enforcement of any judgment, award or regulatory order obtained within or determined pursuant to the laws of the United States of America, Canada or any of their territories or protectorates.

Professional Indemnity Insurance for Accountants

2.12 Interference with Privacy

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from the performance of **Professional Services** alleging unlawful interference with privacy by the **Insured**.

2.13 Joint Ventures

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed by the **Insured** in the **Insured's** capacity as a joint venture partner but only to the extent of the **Insured's** own liability as a joint venture partner.

Liberty will only pay for **Defence Costs** incurred by the **Insured** in respect of such **Claim** solely in respect of its own liability as a joint venture partner.

2.14 Limitation of Liability Contracts

Notwithstanding General Condition 6.4 in respect of "Subrogation", **Liberty** recognises that the **Insured** may enter into written contracts with other parties relating to the performance of **Professional Services** which may exclude or limit the liability of such parties and **Liberty** agrees that such contracts will not prejudice the **Insured's** right to indemnity under the **Policy**. The cover provided under this extension does not apply to contracts (whether or not they are written contracts) entered into as a result of a dispute which involves the **Insured** in any way.

2.15 Loss of Documents

Liberty will pay on behalf of the **Insured** the costs the **Insured** incurs with the prior written consent of **Liberty**, which shall not be unreasonably withheld, for replacing or restoring any **Documents** which are destroyed, damaged or after diligent search cannot be found.

Such destruction, damage or loss must result solely from the performance of **Professional Services** by the **Insured** and be discovered for the first time during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

Liberty will not pay for any destruction, damage or loss resulting from:

- (a) wear and tear or gradual deterioration;
- (b) any computer virus; or
- (c) any act or omission by any person who is not a director, partner or employee of the **Insured** at the time the destruction, damage or loss of such **Documents** is first discovered.

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

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2.16 New Subsidiaries

The definition of **Subsidiary** in Definition 7.18 is extended to include any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, becomes a subsidiary of the **Named Insured** during the **Policy Period** provided that:

- (a) in the case of an acquisition, the revenue of the new subsidiary for the 12 months preceding the date of its acquisition does not exceed 10% of the consolidated revenue of the **Named Insured** and its **Subsidiaries** for the 12 months preceding the commencement of the **Policy Period**;
- (b) the new subsidiary is not incorporated in the United States of America, Canada or any of their territories or protectorates;
- (c) the new subsidiary does not perform **Professional Services** within the United States of America, Canada or any of their territories or protectorates; and
- (d) the new subsidiary has no paid or incurred professional indemnity claims against it for the 5 years preceding the date of its acquisition.

In respect of any other new subsidiary to which any of (a) to (d) do not apply, **Liberty** will provide cover for a period of 45 days (but not beyond the end of the **Policy Period**) from the effective date of the new subsidiary being acquired or created. Upon provision to **Liberty** by the **Named Insured** of full details of the new subsidiary, **Liberty** will consider providing cover for the new subsidiary for a further period on such terms and conditions and for such additional premium as may be agreed.

Cover in respect of any such new subsidiary applies only in respect of **Professional Services** performed whilst the subsidiary is a subsidiary of the **Named Insured**.

2.17 Period of Grace

If the **Policy** is neither renewed nor replaced by the **Named Insured** with a policy or policies providing similar cover then the **Named Insured** is entitled to an automatic extended policy period of 30 days commencing from the end of the **Policy Period** during which time the **Insured** may notify any claim under the **Policy** to **Liberty** provided it results from **Professional Services** performed prior to end of the **Policy Period**.

2.18 Professional Inquiries

Liberty will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by the **Insured** (but excluding the **Insured's** salaries, wages, fees, allowances, travel and accommodation expenses) in preparing for and attending a **Professional Inquiry** provided that:

- (a) such costs and expenses were incurred with the prior written consent of **Liberty** which shall not be unreasonably withheld; and
- (b) the notice requiring the **Insured** to attend the **Professional Inquiry** is first served upon the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**.

The **Insured** shall repay to **Liberty** all payments of **Professional Inquiry** representation costs and expenses incurred on the **Insured's** behalf if and to the extent it is established that such **Professional Inquiry** representation costs and expenses are not insured under the **Policy**.

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

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2.19 Public Relations Costs

Liberty will pay on behalf of the **Insured** the reasonable and necessary costs and expenses incurred by an **Insured** with **Liberty's** prior written consent (which shall not be unreasonably withheld) in seeking advice from a public relations consultant solely for the benefit of protecting the **Insured's** professional reputation as a result of **Professional Services** performed by the **Insured** which have or could reasonably lead to a **Claim** being made against the **Insured**.

This extension is not subject to any **Excess**, however, the **Insured** will bear uninsured 50% of any such costs and expenses. **Liberty** will pay the remaining 50% up to the applicable **Sub-Limit of Liability**.

2.20 Spouses, Estates & Representatives

Liberty will cover:

- (a) in the event of the death, incapacity or bankruptcy of an **Insured**, any **Claim** brought against his or her estate, heirs, executors, administrators or legal representatives; or
- (b) any **Claim** brought against the lawful spouse or domestic partner of an **Insured**, as if the **Claim** had been brought against that **Insured**.

No cover is provided under this extension for any actual or alleged act or omission by such estate, heirs, executors, administrators, legal representatives, lawful spouse or domestic partner.

2.21 Vicarious Liability

Liberty will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed by an **Agent** of the **Insured**.

Liberty will not be liable under this extension for the **Agent's** own liability, nor will **Liberty** be prevented from seeking recovery from any **Agent**.

3. Optional Extensions

The following extensions are subject to all the terms, conditions and exclusions, including all definitions of the **Policy**, and shall apply only if they are specifically included in the **Schedule**.

3.1 Contractual Liability

Notwithstanding Exclusion 4.4(a) in respect of "Contractual Liability & Commercial Risks", **Liberty** will indemnify the **Insured** against civil liability the **Insured** incurs in respect of a **Claim** under an indemnity and/or hold harmless term of a contract to the extent such civil liability results from the **Insured's** performance of **Professional Services**.

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3.2 Fidelity

Notwithstanding Exclusion 4.7 in respect of "Fraud & Dishonesty" **Liberty** will indemnify the **Named Insured** or its **Subsidiaries** for any loss of **Money** sustained by the **Named Insured** or its **Subsidiaries**, or for which the **Named Insured** or its **Subsidiaries** is legally responsible, resulting from any fraudulent, criminal or dishonest act or omission of any employee (acting alone or in collusion with others) committed with the clear intent to cause loss of **Money** to the **Named Insured** or its **Subsidiaries** and resulting in the employee making an improper financial gain for themselves (or any other individual or organisation intended by the employee to receive such gain), provided that:

- (a) in respect of loss sustained by the **Named Insured**, such loss of **Money** is first discovered and reported to **Liberty** during the **Policy Period**;
- (b) in respect of loss sustained by a **Subsidiary**, such loss of **Money** is first discovered whilst the **Subsidiary** is a **Subsidiary** of the **Named Insured** and reported to **Liberty** during the **Policy Period**.

Notification must be given to **Liberty** in accordance with Claims Condition 5.1(a) and the **Insured** must give **Liberty** such information and cooperation as it may reasonably require in accordance with Claims Condition 5.1(b).

However, no cover is provided for any:

- (i) loss of **Money** caused by an employee after a director or partner of the **Named Insured** or its **Subsidiaries** becomes aware or has reasonable cause to suspect that such employee has caused the **Named Insured** or its **Subsidiaries** to sustain such loss during or prior to his or her employment with the **Named Insured** or its **Subsidiaries**;
- (ii) loss of **Money** which arises out of or is any way connected with any fraudulent, criminal or dishonest act or omission committed, condoned or acquiesced in by any past, present or future director or partner of the **Named Insured** or its **Subsidiaries**;
- (iii) salary, wages, allowances, costs, fees or other expenses incurred in establishing the existence or amount of any loss of **Money**;
- (iv) loss which is an indirect or consequential loss of any nature including loss of profits, interest or dividends not realised as a result of loss of **Money**; or
- (v) loss of **Money** outside of Australia or New Zealand or any of their territories or protectorates.

The maximum amount payable by **Liberty** under this extension is the applicable **Sub-Limit of Liability**.

3.3 Reinstatement

Liberty will provide a single reinstatement of the **Limit of Liability** if the **Limit of Liability** is exhausted due to payment of amounts insured under the **Policy**, but **Liberty** will only provide such reinstatement if the limit of liability available under any policy or policies in excess of the **Policy** has or have been exhausted and provided always that **Liberty** will pay no more than a single **Limit of Liability** in respect of each **Claim**.

The cover provided under this extension shall not apply to any extensions or optional extensions to which a **Sub-Limit of Liability** applies.

4. Exclusions

Liberty will not pay for any amounts insured under the **Policy** for or arising out of:

4.1 Anti-Competitive Practices

any contravention of the provisions in Part IV, IVA and IVB of the Competition & Consumer Act 2010 (Cth), Federal Trade Commission Act (USA), Sherman Anti-Trust Act (USA), Clayton Act (USA), all as amended from time to time, or any similar law anywhere in the world regulating monopolisation, anti-trust, price fixing, price discrimination, predatory pricing, restraint of trade or similar activities.

4.2 Asbestos

asbestos, asbestos fibres or derivatives of asbestos.

4.3 Commission Disclosure

the failure by any **Insured** to disclose any commissions, costs or other charges.

4.4 Contractual Liability & Commercial Risks

- (a) a liability which the **Insured** has assumed under a contract unless such liability would have attached in the absence of such contract;
- (b) the insolvency, receivership, administration, bankruptcy or liquidation of the **Insured**;
- (c) any trading debt incurred by the **Insured**;
- (d) the refund of professional fees; or
- (e) any guarantee given by the **Insured** for a debt.

4.5 Employer's Liability

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any actual or deemed employee of the **Insured**.

4.6 Financial Planning & Superannuation

any financial planning or superannuation advice or services where such advice or services requires the provision of an AFS Licence.

4.7 Fraud & Dishonesty

any fraudulent, wilful, grossly reckless, malicious or dishonest conduct including any intentional breach of any law or regulation committed by the **Insured** or their **Agent**.

This exclusion will only apply where it is established by an admission of such **Insured** or their **Agent** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

4.8 Goods & Services Tax

GST imposed or payable in respect of the **Premium** or any payment of insured amounts made under the **Policy**.

4.9 Intellectual Property Rights

any actual, potential or alleged infringement of **Intellectual Property Rights**.

4.10 Licensing Inquiries

any prosecution, inquiry, hearing, commission or other investigation in relation to the **Insured** failing to be properly licensed, registered or accredited to provide **Professional Services** as required by any law or other regulation including industry codes of practice.

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4.11 Management Liability

the **Insured** acting in the capacity of a director or officer.

4.12 Mortgage Broking

any mortgage origination or broking services.

4.13 North America

- (a) any act, error or omission committed or alleged to have been committed within the United States of America, Canada or any of their territories or protectorates;
- (b) any legal or regulatory proceedings brought within the United States of America, Canada or any of their territories or protectorates or in which the laws of those countries are applicable, even if only to a limited extent; or
- (c) the enforcement of any judgment, award or regulatory order obtained within or determined pursuant to the laws of the United States of America, Canada or any of their territories or protectorates.

4.14 Owners & Occupiers Liability

the ownership, management, control or occupation of real property by or on behalf of the **Insured**.

4.15 Penalties & Punitive Damages

- (a) any fines or other penalties; or
- (b) any exemplary, aggravated, multiple or punitive damages.

4.16 Performance Guarantee

any guarantee or warranty given by or on behalf of the **Insured** in relation to the performance of any investment.

4.17 Personal Injury

death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any person.

4.18 Prior Matters

or in any way connected with:

- (a) any written demand or legal proceedings for compensation or **Professional Inquiry** made, threatened, intimated against or involving the **Insured** prior to the commencement of the **Policy Period**;
- (b) any facts that, before the commencement of the **Policy Period**, the **Insured** was aware, or a reasonable person would have been aware, might give rise to a claim under the **Policy**;
- (c) any facts that might give rise to a claim under the **Policy** which have been reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Policy Period**;
- (d) any facts that might give rise to a claim under the **Policy** which have been disclosed to any insurer in any proposal for insurance before the commencement of the **Policy Period**; or
- (e) any facts that might give rise to a claim under the **Policy** which were disclosed to **Liberty** in the proposal.

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4.19 Property Damage

loss of, damage to or destruction of any real or personal property or any consequential losses flowing from such loss, damage or destruction.

4.20 Related Parties

any **Claim** made by or on behalf of:

- (a) one or more **Insured** against another **Insured** other than a **Claim** for contribution or indemnity which results directly from another **Claim** which would be covered under the **Policy** if made directly against such other **Insured**;
- (b) a child, sibling, spouse, partner or parent of an **Insured** or a parent of a spouse or partner of an **Insured**;
- (c) any entity which is owned, controlled or managed by any **Insured**; or
- (d) any parent company or other entity which owns, controls or manages any **Insured**.

4.21 Tax Schemes

any contravention of the provisions in Part IVA of the Income Assessment Act 1936 (Cth) as amended from time to time or any similar legislation.

4.22 Uninsurable Amounts

amounts uninsurable at law.

4.23 War, Terrorism & Nuclear

- (a) war (whether declared or not), civil disturbance or riot;
- (b) any actual or threatened act of terrorism or any action taken to, or taken in an attempt to, control, prevent or suppress any act of terrorism;
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or any waste from the combustion of nuclear fuel; or
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear weapon, installation, reactor or other nuclear assembly or nuclear component thereof.

4.24 Watercraft, Aircraft & Motor Vehicles

the ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the **Insured** of any watercraft, aircraft, motor vehicle or trailer.

5. Claims Conditions

5.1 Notification of Claims & Co-operation

As soon as the **Insured** becomes aware of a **Claim** or **Professional Inquiry** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period", if applicable) the **Insured** must:

- (a) notify **Liberty** in writing of the **Claim** or **Professional Inquiry**. The notification must be sent to:
The Claims Department
Liberty
Level 38, Governor Phillip Tower
1 Farrer Place
Sydney, New South Wales, Australia 2000
Tel: +61 2 8298 5800
- (b) give **Liberty** such information and co-operation as it may reasonably require including but not limited to:
 - (i) a description of the **Claim** or **Professional Inquiry**;
 - (ii) the nature of the allegation;
 - (iii) the nature of the alleged or potential loss;
 - (iv) the names of actual or potential claimants; and
 - (v) the manner in which the **Insured** first became aware of the **Claim** or **Professional Inquiry**.

If any amounts insured under the **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** within a reasonable time of making a claim under the **Policy** and provide **Liberty** with details of the other insurance.

5.2 Defence & Settlement

Liberty may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.

The **Insured** must:

- (a) take all reasonable steps to mitigate loss;
- (b) not agree to any waiver, limitation or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty** which shall not be unreasonably withheld; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
 - (i) the cause and consequences of any **Claim**;
 - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
 - (iii) whether **Liberty** has any liability to the **Insured** under the **Policy** and, if so, the extent of its liability;and, where applicable, conducting the defence of any **Claim**.

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5.3 Excess Insurance

The **Policy** is in excess of any **Additional Insurance**.

5.4 Allocation

In the event the **Insured** is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by the **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of amounts insured under the **Policy** which relate solely to what is covered under the **Policy**.

In the event that an agreement cannot be reached **Senior Counsel** shall determine, as an expert but not an arbitrator, a fair and proper allocation. Until **Senior Counsel** has made his or her determination, **Liberty** may, in its absolute discretion, pay such amount insured under the **Policy** as it considers appropriate.

5.5 Requirement to Contest a Claim

Liberty shall not require the **Insured** to contest any **Claim** unless **Senior Counsel** advises that such **Claim** should be contested. In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter (including potential amounts insured under the **Policy**) and the prospects of the **Insured** successfully defending the **Claim**.

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

6. General Conditions

6.1 Change in Control

If a **Change in Control** occurs during the **Policy Period**, the **Policy** will continue to provide cover but only in respect of civil liability the **Insured** incurs in respect of a **Claim** arising from **Professional Services** performed prior to the effective date of the **Change in Control**.

6.2 Limit of Liability

The maximum amount payable by **Liberty** under the **Policy** is the combined total of the **Limit of Liability** and the **Defence Costs** payable in accordance with Insuring Clause 1.2. The **Limit of Liability** is inclusive of **Sub-Limits of Liability**.

6.3 Excess

Liberty will only pay in respect of a **Claim** and associated **Defence Costs** and other amounts insured under the **Policy**, the amount which is above the **Excess**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

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6.4 Subrogation

If **Liberty** grants indemnity under the **Policy**, then **Liberty** shall be subrogated to the **Insured's** rights of recovery against any person or entity whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything (including but not limited to excluding or limiting the liability of other parties in contracts, whether or not they are written contracts) that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party.

Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** (including **Defence Costs**) shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

6.5 Severability of Proposal

Failure by any **Insured** to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any **Insured** to **Liberty** shall not prejudice the right of any other **Insured** to cover under the **Policy**. Cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such failure or misrepresentation.

6.6 Non-Imputation

For the purposes of determining the availability of cover under the **Policy** the conduct of one **Insured** shall not be imputed to any other **Insured**, provided that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such conduct.

6.7 Governing Law & Exclusive Jurisdiction

The **Policy** is governed by the law in force in the State or Territory of the Commonwealth of Australia in which the **Policy** is issued. All matters arising from or relating to the construction or operation of the provisions of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory.

6.8 Policy Interpretation & Construction

The headings in the **Policy** are for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** and Section 7 - Definitions.

7. Definitions

In the **Policy**:

- 7.1 **Agent** means a natural person, company or other entity who has or had a written contract with the **Named Insured** or its **Subsidiaries** to perform **Professional Services**, but only in relation to the performance of **Professional Services** for or on behalf of the **Named Insured** or its **Subsidiaries**.

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7.2 Change in Control means any one of the following events:

- (a) the **Named Insured** consolidates or merges with, or sells all or substantially all of its assets to a person, entity or group of persons or entities acting in concert;
- (b) the **Named Insured** becomes a subsidiary of another entity or becomes controlled by another entity; or
- (c) a trustee, administrator, receiver or liquidator including any provisional liquidator is appointed to the **Named Insured**.

7.3 Claim means any written demand or legal proceedings for compensation first made or brought against the **Insured** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period", if applicable), and reported to **Liberty** during the **Policy Period** (or the extended policy period under Extension 2.7 in respect of "Extended Policy Period", if applicable), which may result in the payment of any amounts insured under the **Policy**.

All **Claims** attributable to one source or originating cause shall be deemed to be a single **Claim** and one **Excess** shall apply.

7.4 Defence Costs means:

- (a) reasonable and necessary costs and expenses incurred by **Liberty**, or by the **Insured** but only with **Liberty's** prior written consent which shall not be unreasonably withheld, solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any **Claim** covered under the **Policy**; and
- (b) the costs of obtaining **Senior Counsel's** advice or determination under the **Policy** pursuant to Claims Condition 5.4 in respect of "Allocation" and 5.5 "Requirement to Contest a Claim".

Defence Costs does not include salaries, wages, allowances, travel or accommodation expenses incurred by the **Insured** in assessing, investigating, dealing with and assisting others to deal with any **Claim**.

7.5 Document means a document of any nature whether written, printed or reproduced by any method, including computer records or electronic data, in the possession or control of the **Insured** or the property of the **Insured** but does not include **Money**.

7.6 GST means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty or interest payable in respect of that tax.

7.7 Insured means each of the following:

- (a) the **Named Insured** and its **Subsidiaries**; and
- (b) any past, present or future director, partner or employee of the **Named Insured** or its **Subsidiaries** but only in relation to **Professional Services** performed for or on behalf of the **Named Insured** or its **Subsidiaries** whilst they are a director, partner or employee of the **Named Insured** or its **Subsidiaries**.

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- 7.8 Intellectual Property Rights** means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trade marks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information including trade secrets, know-how, formulae, methods, routines and other proprietary technology.
- 7.9 Liberty** means Liberty Mutual Insurance Company, Australia Branch (ABN 61 086 083 605) incorporated in Massachusetts, USA (the liability of members is limited) (**Liberty**)
- 7.10 Money** means shares, bonds, currency, coins, bank notes, bullion, precious metals, gems, jewellery, coupons, stamps, cheques, travellers' cheques, registered cheques, postal orders and money orders.
- 7.11 Policy** means this policy wording, any endorsements to it and the **Schedule**.
- 7.12 Policy Period** means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.
- 7.13 Premium** means the amount payable by the **Named Insured** for the **Policy** including any applicable charges advised by **Liberty**.
- 7.14 Professional Inquiry** means any administrative or regulatory proceeding, official investigation, inquiry or hearing into the performance of **Professional Services** by the **Named Insured** or its **Subsidiaries** which an **Insured** is legally required to attend if findings from such proceeding, investigation, inquiry or hearing could reasonably lead to a **Claim** being made against the **Insured** which may be covered under the **Policy**.
- 7.15 Professional Services** means accountancy services.
- 7.16 Schedule** means the schedule attached to the **Policy** and signed by a person authorised by **Liberty**.
- 7.17 Senior Counsel** means a Senior Counsel to be mutually agreed upon by **Liberty** and the **Insured** or, in the absence of agreement, to be appointed by the current President of the Law Society in the State or Territory in which the **Policy** is issued.
- 7.18 Subsidiary** means any company which, according to the laws of the Commonwealth of Australia or the Australian State or Territory in which the **Policy** is issued, was or is a subsidiary of the **Named Insured** prior to or at the commencement of the **Policy Period**.

Cover in respect of any such company applies only in respect of **Professional Services** performed whilst the company was or is a **Subsidiary** of the **Named Insured**.