

Miscellaneous Risks Professional Indemnity Insurance

Civil Liability Professional Indemnity Policy Wording 10.10

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Introduction

This **Policy** is written on a claims made and notified basis, which means that, subject to Clause 3.2 Continuous Cover, it will only respond to **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**. Any word or expression to which a specific meaning has been attached shall bear the specific meaning as defined in Section 4, Definitions, wherever it may appear.

Insurance Preamble

The **Insured** and the **Insurer** agree that the **Insurer** will, in consideration of the paid premium, provide insurance to the **Insured** on the terms of this **Policy**.

Section 1: Insuring Clauses

1.1 Insuring Clause

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from the conduct of the **Professional Services** by the **Insured** in respect of any act, error or omission occurring after the **Retroactive Date**.

1.2 Limit of Indemnity

The liability of the **Insurer** for compensation and claimant's costs and expenses in respect of all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** shall not exceed the **Limit of Indemnity**.

1.3 Insured Costs

The **Insurer** will, in addition to the **Limit of Indemnity**, pay **Insured Costs**, provided that if the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim** or **Claims** exceeds the **Limit of Indemnity**, the liability of the **Insurer** for such **Insured Costs** shall be only that proportion which the **Limit of Indemnity** bears to the total amount of compensation and claimant's costs and expenses required to dispose of the **Claim** or **Claims**.

1.4 Excess

The **Insured** is liable for compensation and claimant's costs and expenses or **Insured Costs** that are collectively less than the **Excess** for each **Claim**. The **Excess** is deducted from compensation and claimant's costs and expenses payable before the application of the **Limit of Indemnity**.

The **Insured** is liable for **Inquiry Costs** that are less than the **Excess** for each notice. The **Excess** is deducted from **Inquiry Costs** payable before the application of the aggregate limit stated in Clause 3.4.4 Inquiry Costs.

The **Insurer** has no liability for compensation and claimant's costs and expenses, **Insured Costs** or **Inquiry Costs** that are less than the **Excess** for each **Claim** or notice. The **Insured** agrees that the **Excess** must be retained by the **Insured** and is to remain uninsured.

1.5 Aggregation of Claims

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be a single **Claim** and shall attract one **Excess**.

For the purposes of Clause 3.4 Inquiry Costs, all notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single notice and shall attract one **Excess**.

Section 2: Insurance Clarification

For the purposes of clarifying the scope of cover under this **Policy**, Clause 1.1 Insuring Clause includes civil liability for:

2.1 Contractual Liability

Contractual liability, provided that the **Insurer** will not be liable for any liability assumed by the **Insured** under any warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to the **Insured** in the absence of such agreement. Where a **Claim** alleges breach of contract, the **Insurer** will not reduce their liability by the fact that contributory negligence is not available as a defence.

2.2 Intellectual Property

Infringement of rights of intellectual property, provided that:

1. the infringement is committed by the **Insured** in the course of carrying on their **Professional Services**; and
2. the **Insured** did not intend to commit such infringement.

2.3 Libel or Slander

Libel or slander, provided that:

1. the libel or slander is committed by the **Insured** in the course of carrying on their **Professional Services**; and
2. the **Insured** did not intend to commit the libel or slander.

2.4 Sub-contractors and Consultants

Acts, errors or omissions of sub-contractors and consultants of the **Insured**, provided that the **Insurer** will only indemnify the **Insured** for its civil liability in connection with the **Professional Services** provided by the subcontractor and/or consultant. Indemnity will not extend to the sub-contractor and/or consultant who committed the act, error or omission.

2.5 Consumer Protection Legislation

Claims resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation or re-enactment of such legislation, provided that the **Insurer** will not indemnify the **Insured** for **Claims** made where such **Claim** arises:

1. under the penal or criminal provisions of the above Acts, or any similar legislation; or
2. from conduct of the **Insured** which is fraudulent or intended to mislead or deceive.

However the **Insurer** will only exclude such **Claims** where it is established by final adjudication that the **Insured** breached the penal or criminal provisions of the Acts, or where the conduct was established by final adjudication to be fraudulent or intended to mislead or deceive.

Section 3: Automatic Extensions

These Automatic Extensions are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under Section 3, Automatic Extensions will be part of and not in addition to the **Limit of Indemnity**, unless otherwise stated.

3.1 Automatic Reinstatement

In the event of exhaustion or partial exhaustion of the **Limit of Indemnity** solely by reason of indemnity granted for compensation and claimant's costs and expenses in respect of **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**, the **Insurer** agrees to reinstate (or partially reinstate in the case of partial exhaustion) the **Limit of Indemnity** in respect of compensation and claimant's costs and expenses. Provided that:

1. the **Insurer's** liability for any single **Claim** will not exceed the **Limit of Indemnity**; and
2. the aggregate liability of the **Insurer** under this **Policy** will not exceed the sum of the **Limit of Indemnity** and, in the event of exhaustion or partial exhaustion of the **Limit of Indemnity**, a single reinstatement of the **Limit of Indemnity**, save that the **Insurer** will in addition pay **Insured Costs** on the basis already set out in this **Policy**.

3.2 Continuous Cover

Where the **Insured** first became aware of facts or circumstances which may give rise to a **Claim** prior to the **Period of Insurance**, and had not notified the **Insurer** of such facts or circumstances prior to the **Period of Insurance**, then Clause 5.10 Prior Claims or Known Circumstances will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such facts or circumstances, provided that:

1. there is an absence of fraudulent non-compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances; and
2. the **Insured** has, at the time of notification of the **Claim**, been insured without interruption under a professional indemnity **Policy** issued by the **Insurer**, and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances; and
3. the **Insurer** may reduce its liability under this **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to the **Claim** prior to the **Period of Insurance**.

3.3 Dishonesty of Employees

The **Insurer** will, notwithstanding Clause 5.5 Dishonest, Fraudulent or Criminal Acts, indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from any dishonest, fraudulent, criminal or malicious act or omission by any employee of the **Insured** occurring or committed in connection with the **Professional Services**.

Nothing in this Automatic Extension shall require the **Insurer** to indemnify any employee who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who has by act or omission condoned any such act or omission.

3.4 Inquiry Costs

The **Insurer** will indemnify the **Insured** for **Inquiry Costs**, provided that:

1. the notice requiring the **Insured's** attendance at the inquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Period of Insurance**; and
2. such attendance results directly from an act, error or omission committed or allegedly committed by the **Insured** in carrying on their **Professional Services**; and
3. such indemnity is subject to the written consent of the **Insurer** prior to incurring **Inquiry Costs**, and does not include any regular or overtime wages, salaries or fees of the **Insured**; and
4. the total liability of the **Insurer** under this clause shall not exceed \$100,000.

3.5 Joint Venture Liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and claimant's costs and expenses in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** resulting from the **Insured's** participation in a joint venture in connection with the **Professional Services**. Provided that any indemnity given shall relate only to the **Insured's** proportion of any liability incurred by such joint venture.

3.6 Lost Documents

The **Insurer** will, in the event of loss of or damage to **Documents** occurring in connection with the **Insured's** conduct of the **Professional Services**, indemnify the **Insured** against costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents**, provided that:

1. such loss or damage is sustained during the **Period of Insurance** while the **Documents** are either in transit to or in the custody of the **Insured** or of any person to whom the **Insured** has entrusted them in the course of the normal conduct of the **Professional Services**; and
2. the amount of any claim for such costs and expenses shall be supported by bills and accounts which shall be subject to approval by a solicitor to be nominated by the **Insurer** with the consent of the **Insured** or if such consent is withheld, by the President of the Law Society in whichever State the **Policy** was issued; and
3. the **Insurer** shall not be liable in respect of loss or damage caused by riot or civil commotion.

Section 4: Definitions

For the purpose of this **Policy**:

- 4.1 Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purpose or reason, including the intention to influence any government or to put the public, or any section of the public, in fear.
- 4.2 Claim** means any demand made by a third party upon the **Insured** for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process.
- 4.3 Documents** means deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed **Documents** or forms of any nature, but excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments, which is the property of the **Insured** or for which the **Insured** becomes responsible during the conduct of their **Professional Services**.
- 4.4 Excess** means the amount shown in the **Schedule** and represents the first amount which is payable by the **Insured** in respect of compensation and claimant's costs and expenses or **Insured Costs** arising out of or in respect of any one **Claim** made against the **Insured** or in respect of any **Inquiry Costs** arising out of any one notice.
- 4.5 Inquiring Body** means a court, tribunal or legally constituted industry or professional body.
- 4.6 Inquiry Costs** means necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice requiring the **Insured's** attendance at an inquiry or hearing held before an **Inquiring Body**.
- 4.7 Insured** means:
1. the legal entity or entities specified in the **Schedule**; and
 2. past and/or present employees of the legal entity or entities specified in the **Schedule**, but only in their capacity as such; and
 3. any past and/or present sole practitioner, partner or a director of the legal entity or entities specified in the **Schedule**, but only in their capacity as such; and
 4. the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.
- 4.8 Insured Costs** means all necessary and reasonable costs and expenses incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling any **Claim** (not being **Inquiry Costs** or claimant's costs and expenses).
- 4.9 Insurer** means Catlin Australia Pty Ltd on behalf of Syndicate 2003 at Lloyds.
- 4.10 Limit of Indemnity** means the **Limit of Indemnity** as shown in the **Schedule**.
- 4.11 North America** means the United States of America and Canada and their territories and protectorates.
- 4.12 Period of Insurance** means the **Period of Insurance** as shown in the **Schedule**.
- 4.13 Policy** means the **Schedule**, the terms of this **Policy** and any endorsements thereto.
- 4.14 Professional Services** means the **Professional Services**, described in the **Schedule**, of the legal entity or entities specified in the **Schedule**.
- 4.15 Retroactive Date** means the **Retroactive Date** shown in the **Schedule**.

4.16 Schedule means the current **Schedule** issued by the **Insurer** to the **Insured**.

Section 5: Exclusions

The **Insurer** shall not be liable in respect of any **Professional Services, Claim, liability, compensation, Inquiry Costs, claimant's costs and expenses or Insured Costs**:

5.1 Asbestos

arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos.

5.2 Assumption of Liability

arising directly or indirectly from or in respect of any liability which is assumed by the **Insured** outside the normal course of their performance of **Professional Services**.

5.3 Controlling or Financial Interests

arising directly or indirectly from or in respect of work undertaken for or on behalf of any company related to any **Insured**, which for the purposes of this **Policy** includes:

1. any other **Insured**; or
2. any subsidiary of an **Insured**; or
3. any company of which an **Insured** holds or has held at least a 20% financial interest and has had or has board representation at that company.

5.4 Directors' and Officers' Liability

arising directly or indirectly from or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

5.5 Dishonest, Fraudulent or Criminal Acts

arising directly or indirectly from or in respect of any dishonest, fraudulent, criminal or malicious act or omission by the **Insured**.

5.6 Employer's Liability

arising directly or indirectly from or in respect of:

1. the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of their employment; or
2. a breach of any obligation owed by an **Insured** to an **Insured**.

5.7 Fines, Penalties, Punitive or Aggravated Damages

arising directly or indirectly from or in respect of fines or penalties including civil penalties, punitive or aggravated damages.

5.8 Liquidated Damages

arising directly or indirectly from or in respect of liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.

5.9 North America

arising directly or indirectly from or in respect of:

1. any civil liability resulting from the conduct of the **Professional Services** within **North America**; or
2. the provision of **Professional Services** to persons in **North America**; or
3. any **Claim** brought against the **Insured** in any court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders in **North America**; or
4. any **Claim** arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in **North America**.

5.10 Prior Claims or Known Circumstances

arising directly or indirectly from or in respect of:

1. any **Claim** first made against the **Insured** prior to the **Period of Insurance**; or
2. any circumstances, acts, errors or omissions which were:
 - i. known to the **Insured** prior to the **Period of Insurance** and the **Insured** ought reasonably have expected to give rise to a **Claim** or **Inquiry Costs**; or
 - ii. notified under any insurance that was in force prior to the **Period of Insurance**.

5.11 Radioactivity

arising directly or indirectly from or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any nuclear device or assembly, or component thereof.

5.12 Subrogation Waiver

arising directly or indirectly from or in respect of any liability which is incurred or affected by reason of the **Insured** entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against another.

5.13 Terrorism

arising directly or indirectly from or in respect of:

1. any **Act of Terrorism**; or
2. any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

5.14 Trading Debts

arising directly or indirectly from or in respect of any trading debt incurred, or any guarantee in respect of such debt given, by the **Insured**.

5.15 War

arising directly or indirectly from or in respect of any war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

Section 6: General Conditions**6.1 Assistance with Claims**

The **Insured** shall give all such assistance as the **Insurer** may reasonably require but shall not be required to contest any legal proceedings if the **Insured** objects to doing so unless Senior Counsel or a person of similar authority (appointed by mutual agreement between the **Insured** and the **Insurer** and paid for by the **Insurer**) shall advise such proceedings could be contested to the extent that there is a reasonable probability of success.

6.2 Cancellation

The **Insured** may cancel this **Policy** at any time by written request to the **Insurer**. Upon receipt of such request, the **Insurer** will retain a short period premium calculated on the **Insurer's** short term rates for the time it has been on risk and the **Insured** will receive a refund of any balance of the premium actually paid. The **Insurer** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984 by giving notice in writing to the **Insured** of the date from which such cancellation is to take effect.

6.3 Claims Conduct

The **Insurer** shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

6.4 Claims Notification

Every **Claim** made against the **Insured** shall be notified to the **Insurer** as soon as practicable and in any event prior to expiry of the **Period of Insurance**, and every letter, demand writ summons and legal process pertaining to such **Claim** shall be forwarded to the **Insurer** as soon as practicable after receipt. All **Claim** notifications to the **Insurer** must be sent to: The Claims Manager, Brooklyn Underwriting Pty Ltd, PO Box 101, Grosvenor Place NSW 1220

6.5 Claims Settlement

Should the **Insured** object to a proposal by the **Insurer** to settle or compromise any **Claim** and wish to contest or litigate the matter, then the **Insured** may so elect, provided that the **Insurer's** liability in respect of any such **Claim** so contested or litigated shall not exceed the amount for which, but for such election, the **Claim** could have been settled or compromised by the **Insurer**, together with costs and expenses payable in accordance with the terms of this **Policy** and incurred up to the time of such election.

6.6 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Insured** an amount on account of GST. The **Insured** must inform the **Insurer** of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform the **Insurer** of its entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** liability to the **Insured** will be calculated taking into account any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition. 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

6.7 Governing Law

This **Policy** will be governed in accordance with the laws of Australia. Any disputes relating to the interpretation of this **Policy** will be submitted to the exclusive jurisdiction of the courts of Australia.

6.8 No Admission of Liability

No admission, offer, promise or indemnity shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer**.

6.9 Other Insurance

If at the time a claim under this **Policy** arises there is any other insurance in force covering the same liability the **Insured** shall promptly notify to the **Insurer** full details of such other insurance, including the identity of the **Insurer** and the **Policy** number, and such further information as the **Insurer** may reasonably require.

6.10 Payment of Premium

The **Insured** must pay the agreed premium to the **Insurer** by the due date. The due date is on or before 30 days after the inception date of the **Period of Insurance** as specified in the **Schedule** or such other time the **Insurer** agrees to in writing. If the **Insured** fails to pay the premium by the due date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

6.11 Severability and Non-Imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

1. comply with the Duty of Disclosure in terms of the Insurance Contracts Act 1984; or
 2. comply with any obligation in terms of this **Policy**; or
 3. refrain from conduct which is dishonest, fraudulent, criminal or malicious,
- shall not prejudice the right of the remaining party or parties to indemnity under the terms of this **Policy**, provided that such remaining party or parties shall:
- i. be entirely innocent of and have had no prior knowledge of any such failure; and
 - ii. as soon as practicable after becoming aware of any such failure, advise the **Insurer** in writing of all the relevant circumstances.