

2018 AIMS Insurance Brokers  
Professional Indemnity  
**INSURANCE POLICY**

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## SECTION 1: INSURING CLAUSES

### Preamble

In consideration of payment of the **Premium**, **We** will provide indemnity in accordance with, and subject to, the terms of this **Policy**.

#### 1.1 Insuring Clause A - Civil Liability Insuring Clause

**We** will indemnify the **Insured** against civil liability arising from any **Claim** first made against the **Insured** during the **Period of Insurance** and notified to **Us** during the **Period of Insurance** as a result of any civil liability arising in the conduct of the **Insured's Profession**.

#### 1.2 Insuring Clause B - Costs & Expenses Insuring Clause

**We** will pay **Costs & Expenses** incurred with **Our** written consent in respect of any **Claim** indemnified by this **Policy**.

#### 1.3 Policy Clarification

For the avoidance of doubt, the civil liability referred to in Insuring Clauses A and B (clauses 1.1 and 1.2) includes but is not limited to civil liability:

##### 1) Chapter 7 of the Corporations Act 2001 (Cth)

arising from any actual or alleged civil breach of Chapter 7 of the Corporations Act 2001 (Cth) in respect of any retail client;

##### 2) Intellectual Property

arising from any unintentional infringement of copyright, moral right (under the Copyright Act 1968 Commonwealth), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality;

##### 3) Defamation

arising from any actual or alleged defamation, libel or slander;

##### 4) Australian Consumer Law

arising under the Australian Consumer law or Competition and Consumer Act 2010 (Cth), or similar legislation enacted for the protection of consumers by the Australian Government, states or territories of Australia or the Dominion of New Zealand.

#### 1.4 Retroactive Date

- (a) "Unlimited Retroactive Cover" – if no Retroactive Date is specified in the **Schedule** or if the Retroactive Date is specified in the **Schedule** as "Unlimited", this **Policy** shall provide indemnity in respect of **Claim(s)** arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- (b) "Limited Retroactive Cover" – where a Retroactive Date is specified in the **Schedule**, then this **Policy** shall only provide indemnity in respect of **Claim(s)** arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

#### 1.5 Limits of Indemnity

- (a) Where **We** have agreed to provide an **Aggregate Limit of Indemnity** **Our** total liability under this **Policy** will not exceed:
  - (i) in respect of any one **Claim**, including **Costs & Expenses**, the **Limit of Indemnity** as specified in the **Schedule**; and
  - (ii) in respect of all **Claim(s)**, including **Costs & Expenses**, the **Aggregate Limit of Indemnity**.
- (b) Where there is no **Aggregate Limit of Indemnity** specified in the **Schedule**, **Our** total liability under this **Policy** for any one **Claim**, including **Costs & Expenses**, and in the aggregate in respect of all **Claims**, including **Costs & Expenses**, will not exceed the **Limit of Indemnity** specified in the **Schedule**.

- (c) Notwithstanding 1.5 (a) and (b) above, where the **Limit of Indemnity** is expressed in the **Schedule** to be exclusive of **Costs & Expenses**, **We** agree to pay **Costs & Expenses** in addition to the **Limit of Indemnity**.

PROVIDED ALWAYS THAT, if a payment is made to dispose of a **Claim** which is in excess of the **Limit of Indemnity** available under this **Policy**, **Our** liability for such **Costs & Expenses** will be such proportion thereof as the **Limit of Indemnity** available under this **Policy** bears to the amount paid to dispose of the **Claim**.

## SECTION 2: POLICY EXTENSIONS

### Preamble

**We** will provide indemnity as is available under this Section, for no additional premium, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each **Policy** Extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **Deductible** and other terms of this **Policy** (unless otherwise expressly stated herein);
- (b) the inclusion of any **Policy** Extension will not increase the **Limit of Indemnity**;
- (c) where a **Policy** Extension is specified as Not Included in the **Schedule** then this **Policy** shall not provide any indemnity in relation to coverage specified under such **Policy** Extension.

### 2.1 Estates and Legal Representatives

**We** agree to include in the definition of the **Insured** (clause 6.17) the estate, heirs, legal representatives or assigns of any **Insured** in the event of the death or incapacity of such **Insured** in respect of any civil liability of the **Insured** that would have been covered by Insuring Clause A or B if the **Insured** was alive or had capacity PROVIDED ALWAYS THAT such persons will observe and be subject to all the terms of this **Policy** insofar as they can apply.

### 2.2 Fraud and Dishonesty

**Notwithstanding** Exclusion 3.6 (Fraud and Dishonesty), **We** agree to indemnify the **Insured** against:

- 1) civil liability for compensation arising from any **Claim** made against that **Insured**, which would otherwise be excluded by reason of Exclusion 3.5 (Fraud and Dishonesty);
- 2) pecuniary loss suffered by that **Insured**, and/or direct pecuniary loss for which that **Insured** is legally liable or responsible for where any such loss is sustained in consequence of any dishonest or fraudulent act(s) or omission(s) in part or in whole by an **Insured**; or
- 3) civil liability for compensation arising from any **Claim** made against that **Insured** arising from a willful, dishonest or fraudulent breach of any **Claims Settlement Authority**, whether written or verbal, held by any **Insured**;
- 4) failure to comply with the terms and conditions of this **Policy** arising from an act, error or omission of an **Insured**.

PROVIDED ALWAYS THAT:

- (a) such indemnity will not be provided to any **Insured** who committed or condoned any act, error or omission excluded by reason of Exclusion 3.5 (Fraud and Dishonesty);
- (b) other than in respect to 2) above such indemnity shall not apply to any **Claim** against any **Insured** directly or indirectly based upon, attributable to, or in consequence of direct pecuniary loss;

- (c) in respect of clause 2.2 2) above:
1. such loss is first discovered by the **Insured** during the **Period of Insurance** and is notified in writing to **US** during the **Period of Insurance** (but never beyond the expiry date of the **Period of Insurance**);
  2. **We** will not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the **Insured** concerned;
  3. the **Insured** will bear the burden of producing satisfactory proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process);
  4. notwithstanding clause 5.5 Multiple Claims, the **Deductible** will apply to each and every individual dishonest or fraudulent act or omission or series of related acts or omissions; and
  5. **Our** aggregate liability in respect of all losses will not exceed:
    - (i) the sub-limit shown in the **Schedule** for **Fraud & Dishonesty**; or
    - (ii) if no amount is shown, the sum of \$2,500,000; and
- (d) the cover provided by clause 2.2 2) above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

### 2.3 Loss of Documents

**We** agree to indemnify the **Insured** in respect of certain loss described in this clause arising from the loss of any **Documents** (including but not limited to **Documents** which are the property of the **Insured**) which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found, PROVIDED ALWAYS THAT:

- (a) the discovery of such loss of **Documents** occurred during the **Period of Insurance** and was notified in writing to **Us** within sixty (60) days after the date of such discovery (but never beyond the expiry date of the **Period of Insurance**); and
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the **Insured** in replacing and/or restoring such **Documents** and any claim for such costs, charges and expenses; and
- (c) **We** shall not be liable under this **Policy** Extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of:
  - (i) corruption, erasure, theft, alteration of, or
  - (ii) access or lack of access to, or
  - (iii) interference withelectronically stored data of the **Insured** or held by the **Insured** wholly or partly caused by:
  - (iv) any computer virus; or
  - (v) any person who was not an **Insured** and was not acting with an **Insured**where such costs, charges and expenses relate to the **Insured** replacing and/or restoring such data after a period of 48 hours following the time when the virus or the act by a person specified in sub-clause 2.3 (v) took effect; and
- (d) such indemnity shall be limited to the loss of any **Documents** which were in the physical custody or control of the **Insured** or any person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of business.
- (e) **Our** aggregate liability in respect of all losses under this **Policy** Extension shall not exceed:
  - (i) the sub-limit shown in the **Schedule** for Loss of **Documents**; or
  - (ii) if no amount is shown, the sum of \$2,500,000.

- (f) The cover provided by clause 2.3 above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

#### 2.4 Newly Acquired or Created Subsidiary

**We** agree to include in the definition of **Insured** (clause 6.16) any **Subsidiary** acquired or created by the **Named Insured** during the **Period of Insurance** (but never beyond the expiry date of the **Period of Cover** from the date of such acquisition or creation).

PROVIDED ALWAYS THAT this **Policy** Extension will apply only in respect of **Claim(s)** against the **Subsidiary** arising from any act, error or omission occurring subsequent to the date of acquisition or creation of the **Subsidiary**.

For the purposes of this **Policy** extension only, **Insured's Profession** will mean the definition stated in Clause 6.17 and the provision of advice regarding other financial services for which the **Insured** holds a license, but not including stock broking.

#### 2.5 Official Investigations & Enquiries – Costs & Expenses

**We** agree to pay **Investigation Costs & Expenses**, PROVIDED ALWAYS THAT:

- (a) **We** will be entitled, at **Our** discretion, to appoint legal representation to represent the **Insured** in the **Investigation**;
- (b) the **Insured** first receives notice of the **Investigation** (or intended **Investigation**) during the **Period of Insurance** and notifies to **Us** of the receipt of such notice during the same **Period of Insurance**;
- (c) in the event that a claim for payment of **Investigation Costs & Expenses** is withdrawn or indemnity under this **Policy** is subsequently withdrawn or denied, **We** will cease to advance **Investigation Costs & Expenses** and the **Insured** shall refund any **Investigation Costs & Expenses** advanced by **Us** to the extent that the **Insured** was not entitled to such **Investigation Costs & Expenses**, unless **We** agree in writing to waive recovery of such **Investigation Costs & Expenses**; and
- (d) **Our** total liability in respect of **Investigation Costs & Expenses** for all claims made under this **Policy** Extension will not exceed \$1,000,000.
- (e) Notwithstanding clause 5.5 Multiple Claims, in relation to any **Insured**, only one **Deductible** shall apply in respect of each **Investigation** regardless of the number of attendances by that **Insured**.
- (f) The cover provided by clause 2.5 above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

#### 2.6 Pre-Investigation Costs

**We** agree to pay **Pre-Investigation Costs** resulting from a **Pre-Investigation**, PROVIDED ALWAYS THAT:

- 1) **Our** total liability in respect of **Pre-Investigation Costs** for all claims made under this **Policy** Extension will not exceed \$50,000. Notwithstanding the **Deductible** noted in the **Schedule**, the **Deductible** for this extension only shall be noted as \$5,000.
- 2) Notwithstanding clause 5.5 Multiple Claims, in relation to any **Insured**, only one **Deductible** shall apply in respect of each **Pre- Investigation** regardless of the number of attendances by that **Insured**.
- 3) The cover provided by clause 2.6 above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

#### 2.7 Run Off Cover Named Insured

- (a) **We** agree that in the event that a **Named Insured** entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this **Policy** will continue until the expiry date of the **Period of Insurance**.

- (b) Notwithstanding 2.7 (a), and only in respect of civil liability for compensation arising from any **Claim** by retail clients of an **Insured** where the liability arises as a result of a breach of Chapter 7 of the Corporations Act 2001 (Cth), **We** agree that this run off coverage will continue for a further period of 12 months after the expiry date of the **Period of Insurance**.

PROVIDED ALWAYS THAT:

- (i) such coverage will only apply in respect of **Claim(s)** arising from an act, error or omission occurring prior to the effective date that such **Named Insured** entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity; and
- (ii) all coverage pursuant to this Extension 2.7 will cease upon the purchase by any other entity referred to in clause 2.7 (a) of any policy of professional indemnity insurance which provides coverage to the **Named Insured** entity referred to in clause 2.7 (a) for **Claim(s)** described in clause 2.7 (i) above.

## 2.8 Non-Disclosure / Misrepresentation

- 1) Where, prior to the **Policy** being entered into, the **Insured**:

- (a) failed to comply with its duty of disclosure;
- (b) made a misrepresentation to **Us**;

**We** will not exercise any right to avoid the **Policy** (despite the fact that the failure or misrepresentation may have been fraudulent). However, **We** shall be entitled to reduce **Our** liability to pay any **Claim** under the **Policy** to an amount which is the greater of:

- (i) the amount payable in accordance with section 28(2) of the Insurance Contracts Act 1984; and
- (ii) the minimum amount of indemnity required to be held by the **Insured** by the Insurance (Agents & Brokers) Act 1984 and Insurance (Agents & Brokers) Regulations 1985 in force at the time when they were repealed.

- 2) Where such failure or misrepresentation was fraudulent, **We** will be entitled to such rights as may be required to make recovery such that **Our** position is the same as it would have been if the failure or misrepresentation had not occurred. Such right of recovery will apply against any person or entity including any **Insured** or their consultants and advisors,

- (i) responsible for, or
- (ii) who had knowledge of, or
- (iii) who condoned,

that failure or misrepresentation.

## 2.9 Severability and Non-Imputation

Notwithstanding Extension 2.8, where this **Policy** insures more than one **Insured**, any conduct on the part of one **Insured** whereby that **Insured**:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- (b) made a misrepresentation to **Us** before this **Policy** was entered into; or
- (c) failed to comply with any terms or conditions of this **Policy**;

shall not prejudice the right of the remaining **Insured** or **Insureds** to such indemnity as may be provided by this **Policy**, PROVIDED ALWAYS THAT such remaining **Insured** or **Insureds** shall:

- (i) be entirely innocent of and have had no prior knowledge of any such conduct; and
- (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advise **Us** in writing of all known facts in relation to such conduct.

## 2.10 External Dispute Resolution Facilities

**We** agree to provide indemnity to the **Insured** in respect of any:

- (a) liability to meet any **Awards**, and
- (b) external dispute resolution body's fees directly incurred by the **Insured** in respect of a dispute (but not including general membership fees).

## 2.11 Previous Business

**We** agree to provide indemnity in respect of any **Claim** for compensation made against any person who is or becomes or ceases to be during the **Period of Insurance** a principal, partner or director of the **Named Insured** for any civil liability arising from and incurred in the conduct of the same profession as the **Insured's Profession** before that person joined the **Named Insured**.

## 2.12 Continuous cover

**We** will, notwithstanding Exclusion 3.11 (Prior or Pending) and Claims Condition 4.2 (a), provide indemnity in respect of any **Claim** made against the **Insured** where such **Claim** arises from any facts or circumstances ("**Circumstances**"):

- (a) of which the **Insured** first became aware prior to the **Period of Insurance** and which the **Insured** knew, or ought to have reasonably known, had potential to give rise to a **Claim**; and
- (b) which could have, but was not, notified under an earlier policy.

PROVIDED ALWAYS THAT:

- (a) such indemnity will not apply to any **Claim** arising from such **Circumstances** where the **Insured's** decision not to notify such **Circumstances** was intentional;
- (b) an Australian Prudential Regulatory Authority approved insurer has continued as the insurer of the **Insured's** Civil Liability Professional Indemnity policy in uninterrupted succession between the date when the **Circumstances** should have been notified and the date the **Claim** was actually notified;
- (c) such indemnity will be subject to the terms, conditions, **Limit of Indemnity** and **Deductible** applicable to this **Policy**.

## 2.13 Court Attendance Costs

**We** agree to provide up to \$1,000 per day for court attendance costs incurred by the **Insured**, if the **Insured** is legally compelled to attend a civil proceeding as a witness in relation to a **Claim** covered by this **Policy**. **Our** total aggregate liability during any one **Period of Insurance** for all court attendance costs will not exceed \$100,000, and will be part of and not in addition to the **Limit of Indemnity**.

The **Deductible** will not apply to cover under this Extension.

The cover provided by clause 2.13 above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

## 2.14 Public Relations Expense

Where the **Insured** retains the services of a public relations consultant for the sole purpose of protecting the **Insured's** reputation that has been brought to question as a direct result of a **Claim** covered by this **Policy**, **We** agree to pay any reasonable fees, costs and expenses of such public relations consultant, PROVIDED ALWAYS THAT:

- (a) the **Insured** notifies us within sixty (60) days of first becoming aware of the **Insured's** reputation being brought into question, and provides full written details outlining the circumstances surrounding the event; and
- (b) **We** have given prior written consent to retain the services of such public relations consultant;
- (c) **Our** total aggregate liability during any one **Period of Insurance** for all public relations expenses will not exceed \$250,000 and will be part of and not additional to the **Limit of Indemnity**; and
- (d) the **Deductible** will not apply to cover under this extension.

The cover provided by clause 2.14 above is not subject to Insuring Clauses A and B (clauses 1.1 and 1.2).

### 2.15 Joint Venture Liability

**We** agree to provide indemnity in respect of any **Claim** made against the **Insured** or for that proportion of any civil liability which attaches to the **Insured** arising out of any activities in which the **Insured** is engaged, in the conduct of the **Insured's Profession**, as a joint venturer or as a partner in an unincorporated joint venture agreement.

### 2.16 Extended Notification Period

In the event that this insurance is not renewed or is cancelled for any other reason other than non-payment of premium then **We** will indemnify the **Insured** against civil liability arising from any **Claim** first made against the **Insured** in writing during the **Extended Notification Period** and notified to us during the **Extended Notification Period**,

PROVIDED ALWAYS THAT:

- (i) **We** will treat that **Claim** as if it had been first made against the **Insured** and notified to **Us** during the immediately preceding **Period of Insurance**; and
- (ii) coverage afforded hereunder does not reinstate or increase the **Limit of Indemnity** or extend the **Period of Insurance**; and
- (iii) coverage afforded hereunder will:
  - 1. only apply to acts, errors or omissions committed or alleged to have been committed by the **Insured** before the end of the **Period of Insurance** or the cancellation date of this **Policy** where this policy has been cancelled; and
  - 2. not apply to acts, errors or omissions committed or alleged to have been committed by the **Insured** before the retroactive date.

### 2.17 Spotter and/or Referrer

**We** agree to provide indemnity in respect of any **Claim** made against the **Insured** arising out of any act or omission by the **Insured** while acting in the capacity as a **Spotter and/or Referrer**.

However, **We** shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against an **Insured** directly or indirectly arising from, based upon, attributable to or in consequence of the **Insured** dealing or advising in respect of financial planning, accounting, legal, or other services not being part of the **Insured's Profession**.

### 2.18 Privacy

**We** agree to provide indemnity in respect of any **Claim** made against the **Insured** arising from the performance of the **Insured's Profession** alleging a breach of privacy or unlawful interference with privacy by the **Insured**.

## SECTION 3 EXCLUSIONS

We will not be liable under this **Policy** to provide indemnity in respect of any **Claim** against any **Insured** directly or indirectly based upon, attributable to, or in consequence of:

### 3.1 Aircraft and Watercraft

the ownership, lease, operation or use of any aircraft or watercraft by an **Insured**;

### 3.2 Assumed Duty or Obligation

any duty or obligation assumed by an **Insured** by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract, warranty, guarantee or indemnity other than liability arising from a contract between a **Named Insured** and a third party where the **Named Insured** is acting as an insurance intermediary for the provision of services under normal commercial terms;

### 3.3 Bodily Injury/Property Damage

**Bodily Injury or Property Damage** unless such injury or damage occurs as a result of a civil liability arising in the conduct of the Insured's Profession;

### 3.4 Fines and Penalties

any **Claim** for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including, but not limited to, civil penalties;

### 3.5 Fraud and Dishonesty

- (a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of an **Insured** or the consultants, sub-contractors or agents of an **Insured**; or
- (b) any act or omission of an **Insured** or the consultants, sub-contractors, or agents of an **Insured** committed or alleged to have been committed- with a reckless disregard for the consequences thereof; or
- (c) any willful breach of any statute, contract or duty by an **Insured** or the consultants, sub-contractors or agents of an **Insured**; or
- (d) any willful, dishonest or fraudulent breach of any **Claims Settlement Authority**, whether written or verbal, held by any **Insured**;

but only if it is established by final adjudication in a court or tribunal or any formal written admission by an **Insured** that such act, omission, breach or conduct did in fact occur.

### 3.6 Jurisdictional Limits

any **Claim**:

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates;

### 3.7 Nuclear

ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel;

### 3.8 Obligations to Employees

**Bodily Injury** of any **Employee** of an **Insured** or damage to or destruction of any property of any **Employee** of an **Insured**, including loss of use of property, arising out of, or in the course of, their employment;

### 3.9 Occupier's Liability

any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by an **Insured**;

### 3.10 Asbestos

asbestos or asbestos products in whatever form or quantity however this Exclusion will not apply to any **Claim** or part of a **Claim** for a civil liability arising in the conduct of the **Insured's Profession** where the originating cause is not directly related to any asbestos exposure;

### 3.11 Prior or Pending

- (a) any **Claim** made, threatened or intimated against an **Insured** prior to the **Period of Insurance**; or
- (b) any fact or circumstance:
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
  - (ii) of which an **Insured** first became aware prior to the **Period of Insurance**, and which such **Insured** prior to the **Period of Insurance** knew or ought reasonably to have known might give rise to a **Claim** under this **Policy**;

### 3.12 Related or Associated Entities

any **Claim** brought or maintained by or on behalf of:

- (a) an **Insured**;
- (b) any **Subsidiary** or parent of an **Insured**; or
- (c) any person who, at the time of the act, error or omission giving rise to the **Claim** is a **Family Member**,

unless such **Claim** is made without any prior direct or indirect solicitation or co-operation of an **Insured** against whom the **Claim** is made.

### 3.13 Terrorism

any actual or alleged act of **Terrorism** or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of **Terrorism**.

This Exclusion operates in connection with any act of **Terrorism** regardless of any other cause or event and regardless of the sequence of the act of **Terrorism** and the other cause or event.

**"Terrorism"** will mean 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, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear;

### 3.14 Trading Debts

any debt incurred by an **Insured** in connection with the conduct of the **Insured's Profession** by the **Insured**, or any guarantee given by an **Insured** for a debt;

### 3.15 War

war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority;

### 3.16 Investment Advice

any advice or failure to provide advice by any **Insured** in respect of any type of investment, including but not limited to self-managed superannuation funds (including the administration and/or management of self-managed superannuation funds), other than advice or failure to advise in respect of insurance policies issued by life insurance companies registered under the Life Insurance Act 1995 and superannuation for which the **Insured** is licensed to arrange, deal in and advise on;

### 3.17 Insurance Company Management

any **Insured** acting or having acted, or allegedly acting as manager, administrator or officer of any insurance company, discretionary mutual fund or other mutual fund;

### 3.18 Insurer Insolvency

the insolvency of an insurance company, discretionary mutual fund or other mutual fund;

### 3.19 Representations by the Insured

the signing of any proposal form or representation forming a contract of insurance by any **Insured** on behalf of any other party;

PROVIDED ALWAYS THAT:

this Exclusion will not apply in respect of any liability arising directly from representations made by an **Insured**:

- (i) after reliance on data provided or confirmed in writing (including electronic representations) by a client or prospective client to the **Insured**; or
- (ii) to an insurer via the insurer's online electronic placement facility.

### 3.20 Authority to Act under an Agency Agreement

any **Insured**, whilst acting under an agency agreement granted by an Insurer, failing to accurately keep records of account for money paid to any **Insured**;

### 3.21 Breach of Enforceable Undertaking

any willful breach of an enforceable undertaking made under section 93AA of the Australian Securities and Investment Commission Act 2001 (Cth);

### 3.22 Sanctions

any loss or part thereof in respect of any transaction where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or the United States of America.

## SECTION 4: CLAIMS CONDITIONS

### 4.1 Claims Mitigation and Co-Operation.

- (a) If the **Insured**, either prior to or during the **Period of Insurance** becomes aware of a situation which could, if not rectified, lead to a **Claim** or increase the quantum of a **Claim**, the **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- (b) The **Insured** will frankly and honestly disclose to **Us** all relevant information and, in addition will provide assistance to **Us**, as **We** may require to enable **Us** to investigate and to defend any **Claim** under this **Policy** and/or to enable **Us** to determine **Our** liability under this **Policy**.
- (c) Other than **Costs & Expenses** incurred by **Us** to enable **Us** to determine **Our** liability under this **Policy**, compliance with this Condition shall be at the **Insured's** own cost, unless otherwise agreed in writing by **Us**.

### 4.2 Reporting and Notice

- (a) The **Insured** will give to **Us** written notice of any **Claim** made against an **Insured** as soon as practicable and during the **Period of Insurance** in which the **Claim** is made
- (b) Notice of any **Claim** will be given in writing to QBE Insurance (Australia) Limited, who are agreed to be acting on behalf of **Us** in accepting notification of any **Claim**, and delivered to:

The Claims Manager  
Professional Liability Division  
QBE Insurance (Australia) Ltd  
60 Station Rd,  
Parramatta NSW 2150 or piclaims@qbe.com

#### 4.3 Defence and Settlement

- (a) The **Insured** agrees not to settle any **Claim**, incur any **Costs & Expenses** or **Investigation Costs & Expenses**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or loss without **Our** written consent, such consent not to be unreasonably withheld. **We** will not be liable for any settlement, **Costs & Expenses**, **Investigation Costs & Expenses**, admission, offer or payment, or assumed obligation to which **We** have not consented in writing.
- (b) **We** will be entitled if **We** so desire, to take over and conduct, in the name of the **Insured**, the defence or settlement of any **Claim** at any time. In the event that this occurs, **We** will then have sole control of the **Claim**.
- (c) **We** may, if **We** believe that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situation, **We** will reimburse the **Insured** for all reasonable **Costs & Expenses** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**.
- (d) If **We** retain lawyers to conduct, in the name of the **Insured**, the investigation, defence or settlement of any **Claim**, those lawyers will only act on behalf of **Us** in relation to any issue regarding the **Insured's** entitlement to indemnity from **Us** and they will not act on the **Insured's** behalf in respect of any such issue. Any information that is received by lawyers retained by **Us** in the course of investigating, defending or settling any **Claim** against the **Insured** can be provided to **Us** and relied upon by **Us** in relation to any issue that may arise regarding **Our** liability to indemnify the **Insured**. In relation to any such information, the **Insured** waives any claim that it may have for legal professional privilege as between the **Insured**, the lawyers retained by **Us** and **Us**.
- (e) The lawyers retained by **Us** to conduct the investigation, defence or settlement of any **Claim**, may provide advice to **Us** on any issue regarding **Our** liability to indemnify the **Insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **Us** and the **Insured**.
- (f) The **Insured** agrees that all communications between **Us** and lawyers retained by **Us** to act in the conduct of the investigation, defence or settlement of any **Claim** which relate to the **Insured's** entitlement to indemnity from **Us** are privileged as between **Us** and the lawyers and the **Insured** agrees that it is not entitled, under any circumstances, to access or obtain any such communications.
- (g) If any actual or apparent conflict arises between the interests of **Us** and the **Insured's** interests, the lawyers retained by **Us** to conduct the investigation, defence or settlement of any **Claim** may cease acting on behalf of the **Insured** and may continue to act on behalf of **Us** in relation to any dispute between **Us** and the **Insured** with respect to the **Insured's** entitlement to indemnity from **Us**.

#### 4.4 Insured's Right to Contest

In the event that **We** recommend a settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, then the **Insured** may elect to contest such **Claim**, PROVIDED ALWAYS THAT **Our** liability in connection with such **Claim** will not exceed the amount for which the **Claim** could have been so settled plus the **Costs & Expenses** incurred with **Our** written consent up to the date of such election, less the **Deductible**.

#### 4.5 Senior Counsel Clause

- (a) **We** will not require the **Insured** to contest any **Claim** unless a **Senior Counsel** (to be mutually agreed upon by the **Insured** and **Us**) shall advise that such **Claim** should be contested.
- (b) In formulating such advice, **Senior Counsel** will take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Costs & Expenses** and the prospects of the **Insured** successfully defending the **Claim**.

- (c) The cost of such **Senior Counsel's** opinion will be regarded as part of the **Costs & Expenses**.

## SECTION 5: GENERAL CONDITIONS

### 5.1 Alteration to Risk

The **Insured** will give to **Us** written notice as soon as practicable of any material alteration to the risk during the **Period of Insurance** including but not limited to:

- (a) an **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the professional services offered by an **Insured**;
- (c) an **Insured** becoming the subject of disciplinary action by any professional association of which it is a member;
- (d) the cancellation, suspension, termination of , or imposition of any condition upon, the Australian Financial Services License of any **Insured**;
- (e) the banning by ASIC of any principal, employee, agent or **Authorised Representative** of the **Insured**.

Where such notice is given and/or where there is any material alteration to the risk **We** will be entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

### 5.2 Assignment of Interest

No change in, or modification of, or assignment of interest under this **Policy** will be effective except when made by written Endorsement to this **Policy** and signed by a person authorised by **Us** in writing.

### 5.3 Cancellation

- (a) The Named **Insured** may cancel this **Policy** at any time, by notifying **Us** in writing, and **We** will allow a pro-rata refund of **Premium** for the unexpired **Period of Insurance** but such refund will never be greater than 50% of the **Premium**.
- (b) **We** may cancel this **Policy** in accordance with the relevant provisions of the Insurance Contracts Act 1984, and **We** will provide a pro-rata refund of **Premium** for the unexpired **Period of Insurance** but such refund will never be greater than 50% of the **Premium**.

### 5.4 Deductible

- (a) In respect of each **Claim** made against the **Insured** (or each loss incurred or claim made by the **Insured** in respect of **Policy** Extensions 2.2 (2) (pecuniary loss), 2.3 (Loss of Documents) and 2.5 (Official Investigations & Enquiries – Costs & Expenses), the amount of the **Deductible** will be borne by the **Insured** at their own risk and **We** will only be liable to indemnify the **Insured** for that part of any **Claim** (or any loss or claim) which is in excess of the **Deductible**.
- (b) In the event of a **Claim** by the **Insured** under this **Policy**, the **Insured** will, if directed by **Us**, pay to **US** (or as is directed by **Us**) the **Deductible** within seven (7) working days. Any delay, failure or refusal by the **Insured** to pay the **Deductible** will entitle **Us** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order, or any other payment to be made by **Us** under this **Policy**.

In the event that a failure or refusal to grant access to monies for any **Deductible** results in a failure of a settlement or an increase in **Costs & Expenses**, **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Costs & Expenses** incurred with **Our** written consent up to the date of such failure or refusal, less the **Deductible**.

- (c) Where **We** have elected to pay all or part of the **Deductible** in respect of any **Claim** (or any loss or claim), the **Insured** shall, within seven (7) working days from the date of such payment, reimburse **Us** for such payment.
- (d) In respect of any **Claim** (or any loss or claim) where the amount of the **Claim** (or any loss or claim) is less than the amount of the **Deductible**, the **Insured** will bear all **Costs & Expenses** associated therewith unless **We** will have agreed to meet such **Costs & Expenses** pursuant to Insuring Clause B.

- (e) Where the **Deductible** is expressed in the **Schedule** to be inclusive of **Costs & Expenses** then the **Insured** will pay all **Costs & Expenses**, up to the amount of the **Deductible**, incurred by **Us**.
- (f) Any **Costs & Expenses** incurred by **Us** to determine whether **We** have a liability to indemnify the **Insured** under this **Policy** will not be subject to the **Deductible** but will be borne by **Us**.

### 5.5 Multiple Claims

- (a) All causally connected or interrelated acts, errors or omissions will jointly constitute a single act, error or omission under this **Policy**.
- (b) Where a single act, error, or omission gives rise to more than one **Claim**, all such **Claim(s)** will jointly constitute one **Claim** under the **Policy**, and only one **Deductible** will be applicable in respect of such **Claim**. Furthermore, if there is an **Aggregate Limit of Indemnity**, only one **Limit of Indemnity** will be applicable in respect of such **Claim**.

### 5.6 Errors or Omissions of AIMS

An act, error or omission by A & I Member Services Pty Ltd (**AIMS**), but not by an **Insured**, which may give rise to an allegation of failure to comply with a duty of disclosure or of misrepresentation by an **Insured**, will not prejudice the right of an **Insured** to indemnity as may be provided by the **Policy**, PROVIDED ALWAYS THAT this clause does not operate to waive or limit:

- (a) any **Insured's** duty of disclosure;
- (b) any **Insured's** rights of recovery against **AIMS**; and/or
- (c) **Our** rights of subrogation under the **Policy**.

### 5.7 Policy Construction and Interpretation

- (a) The construction, interpretation and meaning of the provisions of this **Policy** will be determined in accordance with the law of the state, territory or country in which this **Policy** is issued, being the Place of Issue specified in the **Schedule**, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the **Schedule** it is agreed that the Place of Issue is Sydney, New South Wales, Australia.
- (b) The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- (c) Under this **Policy**, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

### 5.8 Subrogation

- (a) In respect of any **Claim** covered by this **Policy**, and without limiting **Our** rights at law, **We** will be subrogated to all the **Insured's** rights of recovery, and the **Insured** will execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable **Us** to effectively bring suit in the name of the **Insured**.
- (b) The **Insured** shall not, without first obtaining **Our** written consent, do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation. In particular, without limiting the operation of this provision, the **Insured** will not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the **Insured** may have in respect of any **Claim** covered by this **Policy**.

### 5.9 Confidential Notices to ASIC

Subject to the terms of the **Policy**, indemnity in respect of any **Claim** made by a retail client of the **Insured** and arising directly out of circumstances the subject of any confidential notice given by the **Insured** to ASIC as required by Chapter 7 of the Corporations Act 2001 (Cth) shall not be denied solely on the grounds of such notice having been given.

## SECTION 6: DEFINITIONS

### 6.1 Aggregate Limit of Indemnity

**"Aggregate Limit of Indemnity"** means the amount shown as the Aggregate Limit of Indemnity in the **Schedule**. If no amount is shown, then the Aggregate Limit of Indemnity in respect of all **Claims** or loss under this **Policy** is equal to the **Limit of Indemnity**.

### 6.2 ASIC

**"ASIC"** means the Australian Securities & Investments Commission.

### 6.3 Authorised Representative

**"Authorised Representative"** means a natural person authorised in writing by the **Named Insured** pursuant to Part 7.6 of the Corporations Act 2001 (Cth), and not having been previously banned or suspended by ASIC, to advise and/or deal in financial products of the **Insured's Profession** on behalf of a **Named Insured** who holds an Australian Financial Services licence, but only in respect of any civil liability incurred on or after the commencement date of such written authority.

### 6.4 Award

**"Award"** means any damages, costs or expenses which are awarded against the **Insured** by a binding determination of an external dispute resolution facility or arrangement.

### 6.5 Bodily Injury

**"Bodily Injury"** means physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

### 6.6 Claim

**"Claim"** means:

- (a) the receipt by the **Insured** of any written notice of any:
  - (i) demand for compensation; or
  - (ii) assertion of a legal right to compensation together with any intention to pursue such right; made by a third party against the **Insured**; or
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the **Insured** which seeks compensation or relief made by a third party against the **Insured**.

### 6.7 Claims Settlement Authority

**"Claims Settlement Authority"** means an agreement between the **Insured** and an insurer pursuant to which the **Insured** is authorised by the insurer to settle claims brought by third parties against the insurer pursuant to contracts of insurance between the insurer and such third parties.

### 6.8 Corporate Authorised Representative

**"Corporate Authorised Representative"** means an entity (including its directors and employees) whose name has been advised to **ASIC** for inclusion on the **ASIC** Authorised Representative register and pursuant to Part 7.6 of the Corporations Act 2001 (Cth) is authorised in writing to advise and/or deal in financial products of the **Insured's Profession** on behalf of an **Insured** who holds an Australian Financial Services licence.

### 6.9 Costs & Expenses

**"Costs & Expenses"** means the reasonable legal costs and other expenses incurred by or on behalf of the **Insured** or by **Us** in the investigation, defence, settlement, avoidance or reduction of a **Claim** including any appeal.

### 6.10 Deductible

**"Deductible"** means the amount shown as the **Deductible** in the **Schedule**.

## 6.11 Documents

“**Documents**” means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

## 6.12 Employee

“**Employee**” means any person employed under a contract of service or apprenticeship by the **Named Insured** during or prior to commencement of the **Period of Insurance** whilst acting that capacity in the ordinary course of the **Insured’s Profession** and whom the **Named Insured** has the right to govern, instruct and direct in the performance of their service and compensates by salary, wages and/or commissions.

**Employee** includes any trainee, volunteer and casual, part-time, seasonal, temporary and work experience personnel and or any person that is deemed by Worker’s Compensation Law or occupational health and safety to be an employee of the **Named Insured**.

**Employee** does not include:

- (a) any person employed under such a contract who is not a worker or employee for the purposes of any Worker’s Compensation Law;
- (b) an agent or independent contractor unless otherwise covered by the **Policy** or agreed by **US** in writing.

## 6.13 Extended Reporting Period

“**Extended Notification Period**” means the period commencing on the date of non-renewal or cancellation of this **Policy** and ending on the earlier of:

- (a) the time that the **Insured** enters into another professional indemnity insurance policy; or
- (b) the expiry of 60 days from the day immediately following the non-renewal or cancellation.

## 6.14 Family Member

“**Family Member**” means:

- (a) any spouse, domestic partner, or companion;
- (b) any parent, or parent of any spouse, domestic partner or companion;
- (c) any sibling or child;

of an **Insured person**.

## 6.15 Insurance (Agents and Brokers) Act

“**Insurance (Agents and Brokers) Act**” means the Insurance (Agents and Brokers) Act 1984 (Cth) as it was in force immediately before it was repealed.

## 6.16 Insured

“**Insured**” means:

- (a) the **Named Insured**, any **Subsidiary**, any former **Subsidiary** and any incorporated entities through which the **Named Insured** previously traded, provided that any such incorporated entities are still owned and controlled by the **Named Insured**;
- (b) any person who is, during the **Period of Insurance**, a principal, partner or director of the **Named Insured** but only in respect of work performed within the scope of their duties in the conduct of the **Insured’s Profession** while a principal, partner or director of the **Named Insured**;
- (c) any person who is, during the **Period of Insurance**, an **Employee** of the **Named Insured** but only in respect of work performed within the scope of their duties in the conduct of the **Insured’s Profession** while an **Employee** of the **Named Insured**; or

- (d) any former principal, partner, director or **Employee** of the **Named Insured**, but only in respect of work performed within the scope of their duties in the conduct of the **Insured's Profession** while a principal, partner, director or **Employee** of the **Named Insured**.
- (e) any person who is, during the **Period of Insurance**, an **Authorised Representative** of the **Named Insured** but only in respect of work performed within the scope of their duties in the conduct of the **Insured's Profession** while an **Authorised Representative** of the **Named Insured**; or
- (f) any former **Authorised Representative** of the **Named Insured**, but only in respect of work performed within the scope of their duties in the conduct of the **Insured's Profession** while an **Authorised Representative** of the **Named Insured**.
- (g) any incorporated entity which is, during the **Period of Insurance**, a **Corporate Authorised Representative** of the **Named Insured** or any former **Corporate Authorised Representative** of the **Named Insured**, but only in respect of work performed on or after 11<sup>th</sup> March 2004 which is within the scope of their written agency agreement in the conduct of the **Insured's Profession** while a **Corporate Authorised Representative** of the **Named Insured**; or
- (h) any person, firm or company that exists or existed solely to provide administrative services to the **Named Insured** but only in respect of work performed for a **Named Insured** in the conduct of the **Insured's Profession**.
- (i) any former agent of the **Named Insured**, but only in respect of work performed within the scope of their duties in the conduct of the **Insured's Profession** prior to 11 March 2004.
- (j) any person, firm or company who is or becomes, during the **Period of Insurance**
  - (i) an appointed agent, contractor or sub-contractor of the **Insured** with the written consent of the **Named Insured**; and
  - (ii) who is not an **Authorised Representative** or **Corporate Authorised Representative** of the **Named Insured**; and
  - (iii) who is not required to be authorised as an **Authorised Representative** or **Corporate Authorised Representative** of the **Named Insured**;

but only in respect of work performed on or after 11<sup>th</sup> March 2004 which is within the scope of their written agency, contractor or sub-contractor agreement in the conduct of the **Insured's Profession**.

**"Insured"** shall not include any person or entity that, if so required by law, at the time of an act, error or omission that gave rise to a **Claim**:

- (a) did not hold; or
- (b) was not authorised in writing by a person or entity holding;

the required Australian Financial Services licence as specified by Part 7.6 of the Corporations Act 2001 (Cth) for the provision of the financial services which gave rise to the **Claim**.

#### 6.17 Insured's Profession

**"Insured's Profession"** means the business conducted by the **Insured** being advice given or services performed by or on behalf of the **Insured** as a:

- (a) general insurance broker;
- (b) general insurance agent or authorised representative;
- (c) life insurance broker;
- (d) life insurance agent or authorised representative;
- (e) health insurance fund agent or authorised representative;
- (f) building society agent;
- (g) trustee of a pension and/or superannuation fund of the **Named Insured**; or

- (h) arranger or introducer or authorised credit representative of, premium funding provided by a third party:
  - (i) which is not an **Insured**; or
  - (ii) in which an **Insured** does not have a direct or indirect financial interest other than a **Minor Interest**;
- (i) risk management & related services, claims management services, workers compensation management, work health & safety consultancy and rehabilitation & return to work and services;
- (j) arranger of financial guarantees, bonds and/or surety products on behalf of third parties

**Insured's Profession** shall not include any business activity in respect of which the **Named Insured** did not at the time of the events that gave rise to the **Claim** hold, if required to do so:

- (a) by Part 7.6 of the Corporations Act 2001 (Cth), an Australian Financial Services Licence; or
- (b) any other statutory licence or registration,

to conduct the business activity that gave rise to the **Claim**.

### 6.18 Investigation

**"Investigation"** means any official investigation, examination or enquiry in relation to the conduct of the **Insured's Profession** where such investigation, examination or enquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a **Claim** covered by this **Policy**.

**"Investigation"** includes an investigation, examination or enquiry by way of a Royal Commission or conducted by a **Regulatory Authority**.

**"Investigation"** does not include any investigation, examination or enquiry conducted by a parliament or by any alternate dispute resolution body of which the **Insured** is a member or to which the **Insured** subscribes.

### 6.19 Investigation Costs & Expenses

**"Investigation Costs & Expenses"** means legal costs and other expenses incurred by or on behalf of the **Insured** or by **Us** arising out of any legally compellable attendance by an **Insured** at any **Investigation**.

**"Investigation Costs & Expenses"** does not include any fine, penalty, costs or overheads of the **Insured**, or order for the payment of monetary compensation.

### 6.20 Limit of Indemnity

**"Limit of Indemnity"** means the limit of **Our** liability under this **Policy** as specified in the **Schedule**.

### 6.21 Minor Interest

**"Minor Interest"** means a direct or indirect control or ownership of less than 10% of the issued share capital and/or options in an entity.

### 6.22 Named Insured

**"Named Insured"** means the person, persons, partnership, company, corporation or other entity specified as the **Named Insured** in the **Schedule**.

### 6.23 Period of Insurance

**"Period of Insurance"** means the period specified in the **Schedule**

### 6.24 Policy

**"Policy"** means:

- (a) the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and
- (b) any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Insurance**.

### 6.25 Pre-Investigation

**“Pre- Investigation”** means a formal written notification to a **Regulatory Authority** of a suspected material breach of an **Insured’s** legal or regulatory duty and any interviews, meetings or production of documents arising therefrom.

### 6.26 Pre-Investigation Costs

**“Pre-Investigation Costs”** means the reasonable costs for legal advice and representation in connection with, preparing for, responding to, or attending a **Pre-Investigation**.

**Pre-Investigation Costs** does not include remuneration, cost of the time of any **Insured**, travel costs, or costs or overheads of the Insured.

### 6.27 Premium

**“Premium”** means the Premium specified in the **Schedule** or in any endorsement to the **Schedule**.

### 6.28 Property Damage

**“Property Damage”** means physical loss of, or damage to, or destruction of, any tangible property (other than any Document), including loss of use thereof or any consequential loss.

### 6.29 Proposal

**“Proposal”** means the written proposal made by the **Insured** to **Us** containing particulars and statements which, together with other information provided by the **Insured**, are the basis of and form part of this **Policy**.

### 6.30 Regulatory Authority

**“Regulatory Authority”** means **ASIC** or any disciplinary committee of any association, industry or professional body of which the **Insured** is a member or to which the **Insured** subscribes.

### 6.31 Schedule

**“Schedule”** means the schedule to this **Policy**.

### 6.32 Senior Counsel

**“Senior Counsel”** means a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.

### 6.33 Spotter and/or Referrer

**“Spotter and/or Referrer”** means an **Insured** who provides, pursuant to a written agreement, a referral or introduction of a third party to a financial planning, accounting, legal or other professional services provider.

### 6.34 Subsidiary

**“Subsidiary”** means:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the **Named Insured** specified in the **Schedule**; or
- (b) any entity over which a **Named Insured** is in a position to exercise effective direction or control.

### 6.35 Us, We, Our

**“Us”, “We”, “Our”** means QBE Insurance (Australia) Limited (ABN 78 003 191 035) and others as specified as the Insurers in the **Schedule** and each for their own separate and individual proportion as set out in the **Schedule**. In the absence of indemnity from one party there will be no liability for each or any other party to make up any shortfall in indemnity due to any **Insured**.