

# Policy Wording



## Civil Liability Insurance for Financial Institutions



Bring on tomorrow



## **AIG Financial Institutions Practice**

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AIG's international insurance division's Financial Institutions Practice (AIG FIP) understands the complex challenges financial institutions face and cuts through the complexity with innovative insurance and financial solutions that enable financial institutions to optimally manage risk and capital. As part of the world's leading international insurance organization, we offer an unsurpassed array of insurance and financial products for financial institutions of all types outside of the U.S. and Canada, including banks, mutual funds, hedge funds, private equity/investment firms, venture capital firms, brokers/dealers, insurance companies, investment companies and real estate investment trusts.

Core advantages set us apart in the marketplace:

- Underwriting experience, commitment, capacity and product breadth
- Global reach and local service, with operations in over 80 countries with 10 regions and 17,000 employees
- Local claims expertise worldwide



This Policy is issued / insured by AIG Australia Limited (AIG)  
ABN 93 004 727 753 AFSL No 381686

**Melbourne:** Level 12, 717 Bourke Street, VIC 3008 (1300 030 886)  
**Sydney:** 2 Park Street, NSW 2000 (1300 030 886)  
**Brisbane:** 10 Eagle Street, QLD 4000 (1300 030 886)  
**Perth:** 77 St. George's Terrace, WA 6000 (08) 9202 1366

### Code of Practice

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The **Insurer** is a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

### Privacy Notice

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**This notice sets out how AIG Australia Limited (AIG) collects, uses and discloses personal information about:**

- you, if an individual; and
- other individuals you provide information about.

**Further information about our Privacy Policy is available at [www.aig.com.au](http://www.aig.com.au) or by contacting us at [australia.privacy.manager@aig.com](mailto:australia.privacy.manager@aig.com) or on 1300 030 886.**

### How we collect your personal information

AIG usually collects personal information from you or your agents.

AIG may also collect personal information from:

- Our agents and service providers;
- other insurers;
- people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners;
- third parties who may be arranging insurance cover for a group that you are a part of;
- providers of marketing lists and industry databases; and
- publically available sources.

### Why we collect your personal information

AIG collects information necessary to:

- underwrite and administer your insurance cover;
- maintain and improve customer service; and
- advise you of our and other products and services that may interest you.

You have a legal obligation under the Insurance Contracts Act 1984 to disclose certain information. Failure to disclose information required may result in AIG declining cover, cancelling your insurance cover or reducing the level of cover, or declining claims.



## To whom we disclose your personal information

In the course of underwriting and administering your policy we may disclose your information to:

- entities to which AIG is related, reinsurers, contractors or third party providers providing services related to the administration of your policy;
- banks and financial institutions for policy payments;
- assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim;
- other entities to enable them to offer their products or services to you; and
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

AIG is likely to disclose information to some of these entities located overseas, including in the following countries: United States of America, United Kingdom, Singapore, Malaysia, the Philippines, India, Hong Kong, New Zealand as well as any country in which you have a claim and such other countries as may be notified in our Privacy Policy from time to time.

You may request not to receive direct marketing communications from AIG.

## Access to your personal information

Our Privacy Policy contains information about how you may access and seek correction of personal information we hold about you. In summary, you may gain access to your personal information by submitting a written request to AIG.

In some circumstances permitted under the Privacy Act 1988, AIG may not permit access to your personal information. Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

## Complaints

Our Privacy Policy also contains information about how you may complain about a breach of the applicable privacy principles and how we will deal with such a complaint.

## Consent

If applicable, your application includes a consent that you and any other individuals you provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

## Copyright

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The content of this policy, including but not limited to the text and images herein, and their arrangement, is copyright protected. All rights reserved. AIG hereby authorises you to copy and display the content herein, but only in connection with AIG business. Any copy you make must include this copyright notice. Limited quotations from the content are permitted if properly attributed to AIG; however, except as set forth above, you may not copy or display for redistribution to third parties any portion of the content of this policy without the prior written permission of AIG. No modifications of the content may be made. Nothing contained herein shall be construed as conferring by implication or otherwise any license or right under any patent, trademark, copyright (except as expressly provided above), or other proprietary rights of AIG or of any third party.

**This document contains your Insurance Policy terms, Provisos, Exclusions and Conditions. It is important that you read it, understand it and retain it in a safe place.**



## Policy Schedule

### Civil Liability Insurance for Financial Institutions

Policy Number: >

|                |                                     |  |   |
|----------------|-------------------------------------|--|---|
| <b>Item 1.</b> | <b>Policy holder</b>                | >  |   |
|                | <b>Policy holder's Main Address</b> | <i>Address Line 1</i>                        | >   |
|                |                                     | <i>Address Line 2</i>                        | >   |
|                |                                     | <i>State</i>                                 | >   |
|                |                                     |  | <i>Post Code</i>  |
| <b>Item 2.</b> | <b>Policy Period</b>                | From:  | To:   |
|                |                                     | 4.00 P.M. at the Policyholder's Main Address |   |
| <b>Item 3.</b> | <b>Cover</b>                        | Civil Liability                              |   |
|                |                                     | Administrators and Executors                 | Included/Not Included   |
|                |                                     | Automatic Subsidiaries                       | Included/Not Included   |
|                |                                     | Court Attendance                             | Included/Not Included   |
|                |                                     | Defamation                                   | Included/Not Included   |
| <b>Item 4.</b> | <b>Extensions</b>                   | Discovery Period                             | Included/Not Included   |
|                |                                     | Domestic Partners                            | Included/Not Included   |
|                |                                     | Lost Documents                               | Included/Not Included   |
|                |                                     | Misleading or Deceptive Conduct              | Included/Not Included   |
|                |                                     | Mitigation                                   | Included/Not Included   |
| <b>Item 5.</b> | <b>Continuity Date</b>              | >  |   |
| <b>Item 6.</b> | <b>Limit of Liability</b>           | \$   |   |
| <b>Item 7.</b> | <b>Sublimits of Liability</b>       | Investigation Costs                          | \$ <i>[or No sublimit]</i>  |
|                |                                     | Mitigation                                   | \$50,000 or 50% of the <b>Retention</b> (whichever is the lesser) |
| <b>Item 8.</b> | <b>Retention</b>                    | US Claim                                     | \$  |
|                |                                     | Non-US Claim                                 | \$  |
| <b>Item 9.</b> | <b>Premium</b>                      | Premium:                                     | \$  |
|                |                                     | Stamp Duty:                                  | \$  |
|                |                                     | GST:   | \$  |
|                |                                     | Total payable:                               | \$  |



**Schedule (continued)**

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**Item 10. Insurer** AIG Australia Limited  
ABN 93 004 727 753 AFSL 381686

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**Item 11. Claim Notices** Financial Lines Claims Manager  
AIG  
Level 19,  
2 Park Street, Sydney, NSW, 2000, Australia  
Telephone: 1300 030 886 Facsimile: 1300 634 940

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*Reference & Description*

*Effective Date*

**Item 12. Endorsements**

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**Signed for and on Behalf of the Insurer**

Signature: \_\_\_\_\_

Date of Policy Issuance: >



## Policy Wording

### Civil Liability Insurance for Financial Institutions

In consideration of the payment of the premium and in reliance upon the **Submission**, the **Insurer** and the **Policyholder** agree as follows.

#### 1. Cover

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##### 1.1 Civil Liability

The **Insurer** will pay the:

- (i) **Loss** as a result of a **Civil Liability**; and
- (ii) **Investigation Costs** as a result of an **Investigation**;

of any **Insured** arising out of a **Claim** first made during the **Policy Period** and notified to the **Insurer** as soon as practicable during the **Policy Period**.

#### 2. Extensions

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##### 2.1 Administrators and Executors

“**Insured Person**” shall include the administrator, heirs, legal representatives or executor of a deceased, incompetent, bankrupt or insolvent **Insured Person’s** estate for **Loss** arising from a **Claim** for a **Wrongful Act** of such **Insured Person**.

##### 2.2 Automatic Subsidiaries

“**Subsidiary**” shall include all **Automatic Subsidiaries**.

##### 2.3 Court Attendance

“**Defence Costs**” shall include \$500 (five hundred) per day for each day on which an **Insured Person** has been required to and has attended court as a witness in connection with a **Claim** notified under and covered by this policy. The **Retention** shall not apply to this Extension.

##### 2.4 Defamation

“**Civil Liability**” shall include a legally enforceable obligation to a third party arising from any **Claim** for libel, slander or injurious falsehood committed by an **Insured**.

##### 2.5 Discovery Period

If this policy is neither renewed nor replaced with similar cover at the expiry of the **Policy Period**, the **Policyholder** shall be entitled to a **Discovery Period** of:

- (i) 30 days, granted automatically with no additional premium payable; or
- (ii) 12 months, upon payment of an additional premium of 90% of the annual premium in effect immediately prior to the expiry of the **Policy Period**.

The automatic 30 day **Discovery Period** shall be part of and not in addition to any further period.

##### 2.6 Domestic Partners

“**Insured Person**” shall include the spouse or domestic partner of an **Insured Person** for **Loss** arising from a **Claim** for a **Wrongful Act** of such **Insured Person**.

##### 2.7 Lost Documents

“**Civil Liability**” shall include a legally enforceable obligation to a third party arising from any **Claim** for the destruction, damage to, loss, erasure or mislaying of **Documents**.





## 2. Extensions (continued)

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### 2.8 Misleading or Deceptive Conduct

“**Civil Liability**” shall include a legally enforceable obligation to a third party arising from any **Claim for Misleading or Deceptive Conduct** of the **Insured**.

### 2.9 Mitigation

“**Loss**” shall include reasonable costs and expenses incurred by the **Insured** with the **Insurer’s** prior written consent (which shall not be unreasonably delayed or withheld) in taking action to mitigate a **Claim** made during the **Policy Period**.

## 3. Exclusions

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The **Insurer** shall not be liable to make any payment under any Cover or Extension:

### 3.1 Bodily Injury and Property Damage

arising out of, based upon or attributable to bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment or loss of use of any property. This exclusion shall not apply to Extension 2.4 (‘Defamation’) or Extension 2.7 (‘Lost Documents’).

### 3.2 Proprietary Risk

arising out of, based upon or attributable to: (i) a proprietary trading loss, financial loss or a business loss where the **Insured Company** is acting on its own behalf or as principal; or (ii) any liability under a contract of insurance or reinsurance to pay benefits or indemnity due to an **Insured’s** capacity as an **Insurer** or reinsurer.

### 3.3 Contractual Liability

arising out of, based upon, or attributable to any: (i) liability assumed or accepted by an **Insured** under any contract or agreement except to the extent such liability would have attached to the **Insured** in the absence of such contract or agreement; or (ii) any guarantee or warranty.

### 3.4 Fees, Commissions, or other Compensation

alleging, arising out of, based upon or attributable to fees, commissions, or other compensation for any **Professional Services** rendered or required to be rendered by an **Insured** or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation.

### 3.5 Infrastructure

arising out of, based upon or attributable to electrical, software or mechanical failures, defects or disturbances, including any electrical power, communication or other utility interruption, surge, brownout or blackout, wear and tear or electromagnetic radiation. This exclusion shall not apply to any **Claim** to the extent that it results from a **Wrongful Act** committed by an **Insured Person** in using the systems of an **Insured Company**.

### 3.6 Insolvency

Arising out of, based upon or attributable to the insolvency, receivership, bankruptcy or liquidation of any **Insured Company**.

### 3.7 Insured v Insured/Parent Company

brought by or on behalf of:

- (i) an **Insured**, or successors or assigns of any **Insured**, unless such **Claim** is brought by or on behalf of an **Insured Person** as a customer or client of any **Insured Company**; or
- (ii) the parent company of any **Insured Company** or any entity that is operated, managed or controlled by any **Insured**.



### 3. Exclusions (continued)

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#### 3.8 Lender's Liability

Arising out of, based upon or attributable to any actual or alleged:

- (i) loan, lease or extension of credit except to the extent such **Claim** arises out of a **Wrongful Act** in the administration of such loan, lease or extension of credit; or
- (ii) collection, foreclosure or repossession in connection with any actual or alleged loan, lease or extension of credit.

#### 3.9 Established Misdeeds

Arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which an **Insured** was not legally entitled; or
  - (ii) any criminal, dishonest, fraudulent or malicious acts or omissions;
- in the event that any of the above is established by an admission by an **Insured**, or judgment, award or other finding by a court, tribunal or arbitrator with jurisdiction to finally determine the matter (including the outcome of any appeal in relation to such judgment, award or other finding).

For the purposes of the application of this exclusion, no statements made nor any information or knowledge possessed by any **Insured Person**, nor act, error or omission of any **Insured Person**, shall be imputed to any other **Insured Person**.

#### 3.10 Patent/Trade Secret/Privacy

Arising out of, based upon or attributable to any breach of a right to privacy, infringement of a patent or misappropriation of a trade secret.

#### 3.11 Pollution

Arising out of, based upon or attributable to or in any way involving, directly or indirectly **Pollutants**.

#### 3.12 Prior Claims and Circumstances

Arising out of, based upon or attributable to any:

- (i) **Claim** of which a **Responsible Person** had knowledge at or prior to inception of this policy;
- (ii) **Claim** or circumstance of which notice has been or could have been given under any policy which this policy is a renewal or replacement or succeeds; or
- (iii) fact alleged in or a **Wrongful Act** which is pertinent to or the same or related **Wrongful Acts** alleged or contained in any **Claim** or circumstance referenced in (i) or (ii) above.

#### 3.13 Regulatory

Brought by, in the right of, on behalf of or instigated by any **Official Body** whether directly or indirectly, except:

- (i) with respect to **Investigation Costs**;
- (ii) when acting solely in such **Official Body's** capacity as a customer or client of an **Insured Company**; or
- (iii) when acting on behalf of any client or customer of an **Insured Company** pursuant to any statutory provision.

#### 3.14 Shareholder

Brought by, in the right of or on behalf of any shareholder of an **Insured Company** unless brought as its customer or client.

#### 3.15 Trustees

arising out of, based upon or attributable to any act or omission by an **Insured** as a trustee, fiduciary or administrator of an **Insured Company's** pension fund, superannuation fund, profit-sharing or employee benefits programme, including any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or the Pensions Act 1995 (UK) or any similar provisions of the law, common or statutory, of any state, territory, jurisdiction, or political subdivision thereof.



#### 4. Definitions

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In this policy the following words in **bold** shall have the definitions that follow:

##### 4.1 Automatic Subsidiary

any entity which, during the **Policy Period**, the **Policyholder** either directly or indirectly through one or more other entities, acquires or creates and:

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the shareholder or equity voting power; or
- (iii) holds more than half of the issued share capital or equity;

provided such entity, at the date of such acquisition or creation:

- (a) has revenue from professional services of less than 25% of the combined **Professional Services** revenue of all **Insured Companies** at the inception date of this policy;
- (b) is not incorporated, domiciled or providing professional services in the United States of America and is not regulated by the US Securities and Exchange Commission;
- (c) has not had a claim relating to professional services paid by any **Insurer** within the five years immediately preceding the inception date of this policy; and
- (d) does not derive its revenue primarily from investment banking, merger and acquisition advice, hedge funds or derivatives trading.

If the newly acquired or created entity fails to meet any or all of the conditions above, the **Policyholder** may request an extension of this policy for such entity provided the **Policyholder** shall give the **Insurer** sufficient details to permit the **Insurer** to assess and evaluate the **Insurer's** potential increase in exposure. The **Insurer** shall be entitled to amend the policy terms, definitions, exclusions and provisions in respect of such entity, during the **Policy Period**, including the charging of a reasonable additional premium to reflect the increase in exposure. Such entity is deemed to be an **Automatic Subsidiary** for 45 days from the date of acquisition or creation, provided that during such time the **Policyholder** shall provide sufficient details as required by the **Insurer**.

##### 4.2 Civil Liability

a legally enforceable obligation to a third party arising from a **Wrongful Act**.

##### 4.3 Claim

- (i) a written demand or civil, regulatory or arbitration proceeding or **Investigation** seeking compensation for a specified **Wrongful Act**;
- (ii) a criminal proceeding for a specified **Wrongful Act**; or
- (iii) an **Investigation** in which no **Wrongful Act** has been specified.

##### 4.4 Continuity Date

the applicable date specified in Item 5 of the Schedule.

##### 4.5 Defence Costs

reasonable fees, costs and expenses incurred with the **Insurer's** prior written consent (which shall not be unreasonably delayed or withheld), by or on behalf of an **Insured** after a **Claim** is made, in the investigation, defence, discharge, dismissal, settlement or appeal of such **Claim**, but shall not include remuneration of any **Insured Person**, cost of their time or costs or overheads of any **Insured Company** (except costs under Extension 2.3 ("Court Attendance")). "**Defence Costs**" include the reasonable fees, costs and expenses of an accredited expert retained through defence counsel approved by the **Insurer** on behalf of an **Insured** in order to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim**.

##### 4.6 Discovery Period

a period immediately following expiry of the **Policy Period** during which written notice may be given to the **Insurer** of a **Claim** first made during such period or the **Policy Period**, for a **Wrongful Act** committed before expiry of the **Policy Period**.

#### 4. Definitions (continued)

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##### 4.7 Document

any document of any nature whatsoever other than currency or other negotiable instrument, or records thereof.

##### 4.8 Insured

any **Insured Company** or any **Insured Person**.

##### 4.9 Insured Company

the **Policyholder** or any **Subsidiary**.

##### 4.10 Insured Person

a natural person who was, is or, during the **Policy Period** becomes:

- (i) a director or officer, but not an external auditor or insolvency office-holder, of an **Insured Company**;
- (ii) a paid employee (full time, part-time or temporary) working under the direct control and supervision of an **Insured Company**.

Other than in the case of Extension 2.6 ('Domestic Partners') or Extension 2.1 ('Administrators and Executors'), "**Insured Person**" means exclusively those persons employed by an **Insured Company** in the performance of **Professional Services**. "**Insured Person**" does not mean any independent broker, independent financial adviser, external auditor or any similar agent or independent representative remunerated on a sales or commission basis unless specifically agreed by the **Insurer** and endorsed to this policy.

##### 4.11 Insurer

AIG Australia Limited as fully specified in Item 10 of the Schedule.

##### 4.12 Investigation

any hearing, investigation, examination or inquiry by an **Official Body** concerning the affairs of an **Insured Company** or an **Insured Person** in his capacity as such in the performance of or failure to perform **Professional Services**, once the **Insured Person** receives written notice from an **Official Body** requiring that **Insured Person** to attend or produce documents. An **Investigation** shall be deemed to be first made when the **Insured Person** first becomes so required to attend or produce documents. "**Investigation**" shall not mean routine regulatory supervision, inspection or compliance reviews, or any investigation which focuses on an industry rather than an **Insured**.

##### 4.13 Investigation Costs

reasonable fees, costs and expenses (except remuneration of any **Insured Person**, costs of their time or costs or overheads of any **Insured Company**) incurred with the **Insurer's** prior written consent (which shall not be unreasonably withheld) by or on behalf of an **Insured Person** in: (i) preparing for, attending or producing documents to an **Investigation**; or (ii) responding to a raid on, or on-site visit to, any **Insured Company** by an **Official Body** that involves the production, review, copying or confiscation of files or interviews of any **Insured Persons**.

##### 4.14 Loss

- (i) **Defence Costs**;
- (ii) **Investigation Costs**;
- (iii) damages and related costs awarded pursuant to a final judgment or other final adjudication or arbitration;
- (iv) compensation awarded by an **Official Body**;
- (v) a settlement negotiated with the **Insurer's** prior written consent; resulting from a **Claim**.

#### 4. Definitions (continued)

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“**Loss**” shall not include (i) fines or penalties, (ii) non-compensatory, punitive, exemplary multiple or aggravated damages (other than in the case of **Civil Liability** under Extension 2.4 (‘Defamation’), (iii) taxes; (iv) wages, salaries, remuneration or any employment-related benefits of any **Insured Person**; (v) any amounts for which an **Insured Person** is not legally liable (vi) the cost of complying with any settlement for or award of non-monetary relief; or (vii) amounts which are uninsurable under the laws of Australia or New Zealand.

##### 4.15 Misleading or Deceptive Conduct

any actual or alleged misleading or deceptive conduct at law or under the *Corporations Act 2001* (Cth), *Australian Securities and Investments Commission Act 2001* (Cth), *Trade Practices Act 1974* (Cth) or any similar provisions in the States’ Fair Trading Acts.

##### 4.16 Official Body

any regulator, government, governmental body, governmental or administrative agency, self-regulatory body, professional body, authority, Royal Commission, Commission of Inquiry, stock exchange or any other person having legal authority to conduct an **Investigation**.

##### 4.17 Policyholder

the organisation specified in Item 1 of the Schedule.

##### 4.18 Policy Period

The period specified in Item 2 of the Schedule.

##### 4.19 Pollutant

Any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including, but not limited to, asbestos, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

##### 4.20 Professional Services

The financial services declared in the **Submission** performed by or on behalf of an **Insured Company** pursuant to an agreement with a third party: (i) for compensation; or (ii) in conjunction with services for compensation.

##### 4.21 Responsible Person

Any person appointed by an **Insured Company** with responsibility for monitoring or reporting **Claims**, or a director, officer, general counsel or risk manager of an **Insured Company**.

##### 4.22 Retention

The amount specified in Item 8 of the Schedule.

##### 4.23 Submission

Each and every signed proposal form, including the declarations, statements and representations therein, its attachments, any publicly available financial statements of an **Insured Company** and all other information which is either submitted to the **Insurer** or incorporated in the proposal form by reference.

##### 4.24 Subsidiary

Any entity in which the **Policyholder**, either directly or indirectly through one or more other entities:

- (i) controls the composition of the board of directors;
  - (ii) controls more than half of the shareholder or equity voting power; or
  - (iii) holds more than half of the issued share capital or equity;
- on or before the inception date of this policy.

## 4. Definitions (continued)

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### 4.25 Transaction

Any one of the following events:

- (i) the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- (ii) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**;
- (iii) the appointment to an **Insured Company** of a receiver, liquidator or administrator; or
- (iv) an **Insured Entity** becomes a subsidiary of another entity or becomes controlled by another entity by virtue of any law.

### 4.26 Wrongful Act

Any actual or alleged act, error, omission in the performance of or failure to perform **Professional Services** by: (a) any **Insured**; or (b) any other person for whom an **Insured Company** is legally liable.

### 4.27 US Claim

A **Claim** brought or maintained within the jurisdiction of, or based upon acts in or any laws of the United States of America, its states, localities, territories or possessions.

## 5. General Provisions

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### 5.1 Discovery Period

The **Policyholder** must make any request for a **Discovery Period** in writing, and pay any applicable additional premium, no later than 30 days after expiry of the **Policy Period**. A **Discovery Period** is not cancellable by the **Policyholder**. No **Discovery Period** is available if this policy is cancelled or avoided.

While this policy affords to the **Policyholder** no right to a **Discovery Period** if a **Transaction** takes place; upon written request of the **Policyholder**, the **Insurer** may quote a 72 month run-off discovery period. In considering such request, the **Insurer** shall be entitled to fully underwrite the exposure and to extend such offer on whatever terms, conditions and limitations that the **Insurer** deems appropriate.

### 5.2 Limit of Liability

The total amount payable by the **Insurer** under this policy shall not exceed the **Limit of Liability**. The total amounts payable by the **Insurer** under any Extensions subject to a Sublimit of Liability shall not exceed the applicable amount specified for that Extension. Sub-limits of liability, Extensions, **Defence Costs** and **Investigation Costs** are part of and are not payable in addition to the **Limit of Liability**.

### 5.3 Retention

The **Insurer** shall be liable only for **Loss** which exceeds the **Retention**. The **Retention** applies to **Defence Costs**. It is to be borne by the **Insured** and shall remain uninsured. The **Retention** is not part of the **Limit of Liability**. A single **Retention** shall apply per **Claim**.

### 5.4 Notification of Claims and Circumstances

The **Policyholder** shall notify the **Insurer** as soon as practicable and during the **Policy Period** or an applicable **Discovery Period** of any **Claim** first made against an **Insured** during the **Policy Period** or an applicable **Discovery Period**. All notifications must be in writing to the address in Item 11 on the Schedule and reference the Policy Number.

Any **Insured** may, during the **Policy Period**, notify the **Insurer** at the above address of any circumstance reasonably expected to give rise to a **Claim**. The notice must include the reasons for anticipating that **Claim**, and full particulars as to dates, acts and persons involved.

The details of any other insurance policy which may apply to any **Loss** covered under this policy shall be reported to the **Insurer** within a reasonable time of any **Claim** or circumstance notification.



## 5. General Provisions (continued)

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### 5.5 Related Claims, Single Claim

Any **Claim** made after expiry of the **Policy Period** (or applicable **Discovery Period**) which alleges, arises out of, is based upon or attributable to any fact alleged in, or **Wrongful Act** which is pertinent to:

- (i) a **Claim** first made during the **Policy Period** (or applicable **Discovery Period**); or
- (ii) a circumstance reasonably expected to give rise to a **Claim**;
- (iii) which was notified to the **Insurer** during the **Policy Period**, will be accepted by the **Insurer** as having been made at the same time as the previously notified **Claim** was made or the previous circumstance was notified, and notified at the same time as the previously notified **Claim** or circumstance

Also, any **Claim** or series of **Claims** arising out of, based upon or attributable to continuous, repeated or related **Wrongful Acts** shall be considered a single **Claim**.

### 5.6 Continuity

In the absence of fraudulent non-disclosure, where a **Claim** that would otherwise be covered by this policy is excluded by Exclusion 3.12 ('Prior Claims and Circumstances'), then cover is provided under this policy for that **Claim**, provided always that:

- (i) the **Responsible Person** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**; and
- (ii) the cover shall be in accordance with all the terms, conditions, exclusions and limitations of the policy in force when the **Responsible Person** first became so aware.

### 5.7 Defence and Settlement of Claims

All **Insureds** shall at their own cost, render all reasonable assistance to and cooperate with the **Insurer**. In the event of any **Claim**, each **Insured** shall take reasonable steps to mitigate **Loss**.

Except as otherwise provided in this clause, the **Insured** shall have the right and duty to defend and contest any **Claim** made against them. The **Insurer** shall be entitled to effectively associate in such defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer** making a payment under this policy.

The **Insurer** will accept as reasonable and necessary the retention of separate legal representation to the extent required by a conflict of interest between any **Insureds**.

If a **Claim** is made against an **Insured Person** by the **Policyholder**, the **Insurer** shall have no duty or obligation to communicate with any other **Insured Person** or **Insured Company** in relation to that **Claim**.

### 5.8 Advance Payment

Except to the extent that the **Insurer** has denied indemnity for any **Claim**, the **Insurer** shall advance **Defence Costs** and **Investigation Costs** in excess of the **Retention**, if applicable, promptly after sufficiently detailed invoices for those costs are received by the **Insurer**.

The **Insurer** may not refuse to advance **Defence Costs** and **Investigation Costs** by reason only that the **Insurer** considers that conduct referred to in paragraphs (i) and (ii) of Exclusion 3.9 ('Established Misdeeds') has occurred, until such time as there is an admission by the **Insured**, or, a judgment, award or other finding by a court, tribunal or arbitrator with jurisdiction to finally determine the matter (including the outcome of any appeal in relation to such judgment, award or other finding) which establishes the foregoing.

The **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.



## 5. General Provisions (continued)

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### 5.9 Consent

The **Insured** shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent (which shall not be unreasonably delayed or withheld) of the **Insurer**. Only judgments resulting from **Claims** defended in accordance with this policy shall be recoverable as a **Loss** under this policy.

The **Insured** may select its own counsel without obtaining the **Insurer's** prior consent; however, the consent provisions of this policy apply nonetheless to that firm's rates, activities and terms of engagement.

### 5.10 Allocation

The **Insurer** shall have no liability to make any payment or to provide any service in connection with any **Claim** except to the extent such payment or service relates to the defence of a **Claim** against an **Insured** in its capacity as such. Where the handling or defence of a **Claim** involves both covered and uncovered matters or parties, the **Insurer** shall be liable only for such costs and services which relate exclusively to the defence of the **Claim** on behalf of the **Insured** in their capacity as such.

### 5.11 Changes in Risk during Policy Period

- (i) If during the **Policy Period** a **Transaction** takes place with respect to any **Insured Company** then the cover provided under this policy with respect to such **Insured Company** and any **Subsidiary** is amended to apply only to **Wrongful Acts** committed prior to the date of the **Transaction**. The **Policyholder** shall give the **Insurer** written notice of the **Transaction** as soon as practicable, but not later than 30 days after the effective date of the **Transaction**.
- (ii) Cover for any **Claim** against any **Insured Company** or any **Insured Person** of an **Insured Company** shall apply only for **Wrongful Acts** committed while such entity is an **Insured Company** and while such **Insured Person** served in an **Insured Person** capacity.

### 5.12 Subrogation and Cooperation

The **Insurer** shall be subrogated to all **Insureds'** right of recovery, contribution and indemnity before or after any payment under this policy. The **Insured** shall do nothing to prejudice such rights. The **Insureds** shall, at their own cost: (i) give the **Insurer** full details of a reported circumstance or **Claim** as soon as possible together with all relevant documents; and (ii) assist and cooperate with the **Insurer** in the investigation, defence, settlement or appeal of a **Claim** or reported circumstance. The **Insurer** shall not exercise its rights of subrogation against an **Insured Person** in connection with a **Claim** unless the **Insurer** has established that Exclusion 3.9 ('Established Misdeeds') applies to that **Claim** and that **Insured Person**.

### 5.13 Notice and Authority

The **Policyholder** shall act on behalf of all **Insureds** in connection with all matters relevant to this policy.

### 5.14 Assignment

Neither this policy nor any right under it may be assigned without written consent of the **Insurer**.

### 5.15 Policy Interpretation

Any interpretation of this policy relating to its construction, validity or operation shall be determined by the laws of the Commonwealth of Australia and the Australian State or Australian Territory in which the policy is issued. No amendment to this policy will be effective unless it is written. Except as otherwise provided herein, the parties will submit to the exclusive jurisdiction of Australian courts.

This policy, its Schedule and any endorsements are one contract in which, unless the context otherwise requires:

- (i) headings are descriptive only, not an aid to interpretation;
- (ii) singular includes the plural, and vice versa;
- (iii) the male includes the female and neuter;
- (iv) all references to specific legislation include amendments to and re-enactments of such legislation; and





## 5. General Provisions (continued)

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- (v) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a **Claim** is made.

### 5.16 Cancellation of the Policy

The **Policyholder** may cancel this policy by providing written notice to the **Insurer** in which case the **Insurer** shall retain the customary short rate proportion of the premium. The **Insurer** may not cancel this policy except for non-payment of the premium.

### 5.17 Validity

This policy is not binding upon the **Insurer** unless it is signed on the Schedule by an authorised representative of the **Insurer**.

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