



Excess of Loss Professional Indemnity

Insurance Policy

Specimen

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IMPORTANT NOTICES

Privacy Policy

Assetinsure and the Insurer are committed to safeguarding and protecting the privacy of personal information. We are bound by the provisions of the Privacy Act 1988 which sets out the standards to be met in the collection, use and disclosure of personal information.

If you require further information about our Privacy Policy, please refer to the detailed information on our website – www.assetinsure.com.au/interest.asp

If you want to access your personal information held by Assetinsure and/ or the Insurer, or wish to make a complaint in relation to privacy issues, please contact us either electronically: info@assetinsure.com.au or complaints@assetinsure.com.au or at 44 Pitt Street, Sydney, NSW, 2000.

General Insurance Code of Practice

Assetinsure has adopted the General Insurance Code of Practice which stipulates minimum standards of services to our clients. If you would like further information in regard to the Code of Practice, please refer to the Code of Practice website – www.codeofpractice.com.au or our own website – www.assetinsure.com.au/interest.asp

The Insurer is not a signatory to the Code of Practice.

Complaints Handling Procedure

If you think we have let you down in anyway, or our service is not what you expect, please tell us so we can assist.

Contact information and details of our complaints handling procedure are available on our website - www.assetinsure.com.au/interest.asp

Words with Special Meaning

In this policy document the words in bold (except for titles) have special meaning and are defined – please refer to the Definitions section.

Financial Claims Scheme

This policy may be a “protected policy” under the Financial Claims Scheme (FCS) administered by the Australian Prudential Regulation Authority (APRA).

In the event the insurer of a “protected policy” becomes insolvent, a person entitled to claim under that insurance may be entitled to payment under the FCS.

Access to the FCS is subject to eligibility criteria.

Information about the FCS can be obtained from the APRA website www.apra.gov.au and the APRA hotline 1300 13 10 60.



Preamble

This is a claims made and notified insurance policy whereby Assetinsure Pty Ltd ABN 65 066 463 803 (**Assetinsure**) as the agent for the **Insurer** has accepted the **Proposal Form** from the **Insured**. **Assetinsure** for and on behalf of the **Insurer** has relied on the information contained in the **Proposal Form** in determining whether to enter into this **Policy** and the terms, conditions and exclusions of this **Policy**.

Assetinsure for and on behalf of the **Insurer** agrees with the **Insured** to provide insurance in accordance with the terms of this **Policy** in consideration of payment in full of the premium and any associated charges specified in the **Schedule** or any endorsement to this **Policy**.

Insuring Clause

1. The **Insurer** will indemnify the **Insured** during the **Policy Period** up to the **Limit of Indemnity** in excess of the **Underlying Limit**.
2. The indemnity provided by this **Policy** will apply:
 - i. as excess insurance, but only after **Exhaustion** of the **Underlying Limit**; or
 - ii. as primary insurance, subject to the remaining amount of the **Limit of Indemnity**, but only after **Exhaustion** of the **Underlying Limit** (including any reinstatement of the same which may be provided by the **Underlying Policies**). Such primary insurance shall only be available for **Loss**, arising from **Claims** which have not contributed to the **Exhaustion** of the **Underlying Limit** and will be subject to any self-insured retention, deductible or excess specified in the **Primary Policy**.
3. This **Policy** is subject to the provisions of the **Primary Policy** except where the same are limited or restricted by any other **Underlying Policy** or the provisions of this **Policy**.

In the event of a conflict between the provisions of the **Primary Policy**, or any other **Underlying Policy**, and the provisions of this **Policy**, the provisions of this **Policy** shall prevail.

In no event shall this **Policy** provide any indemnity that, but for the **Exhaustion** of the **Underlying Limit**, would not have been provided by any of the **Underlying Policies**.

Underlying Insurance

1. The **Insured** shall maintain in full effect all of the **Underlying Policies** during the **Policy Period** except for **Exhaustion** of the **Underlying Limit** or to the extent that the **Underlying Limit** is reduced by:
 - i. payment by the **Underlying Insurers** in respect of any **Loss** or settlement for which the **Insured** is entitled to indemnity under the **Underlying Policies**; or
 - ii. where applicable, the retention by the **Insured** of any portion of **Loss** or settlement for which the **Insured** is entitled to indemnity under any **Underlying Policy** by reason of non-payment of such amount by any **Underlying Insurer**.



2. Any **Loss** or settlement for which the **Insured** is entitled to indemnity under the **Underlying Policies** which for any reason remains unpaid (by reason of financial impairment or insolvency of any **Underlying Insurer** or otherwise), in whole or in part, by any **Underlying Insurer** will be retained by the **Insured** and will not be the subject of indemnity under this **Policy**. The **Insurer** will recognise such retention by the **Insured** of **Loss** or settlement for which the **Insured** is entitled to indemnity but which remains unpaid by any **Underlying Insurer** as contributing to the **Exhaustion** of the **Underlying Limit**.
3. The **Insured** shall give **Assetinsure** immediate written notice (including full particulars) of any erosion or **Exhaustion** of the **Underlying Limit**.
4. Any alteration or amendment to any **Underlying Policy** during the **Policy Period** shall not affect the liability of the **Insurer** under this **Policy** until such time as the **Insurer** has agreed in writing to such alteration or amendment.
5. The **Insured** shall give **Assetinsure** immediate written notice (including full particulars) of any alteration or amendment to, or cancellation of, any **Underlying Policy** during the **Policy Period**.
6. The **Insurer** shall be entitled to reduce any indemnity which may be available to the **Insured** under this **Policy** in respect of any **Loss**, settlement or any other payment to the extent of any prejudice suffered by the **Insurer** arising from any failure by the **Insured** to comply with clauses 1, 3 or 5 above.

Underlying Sub-Limits

1. Where this **Policy** operates as excess insurance, the **Insurer** will not indemnify the **Insured** for any **Loss** or settlement for which indemnity is subject to a sub-limit under any of the **Underlying Policies**. However, in the event of **Exhaustion** of the **Underlying Limit**, indemnity will be available in respect of any **Loss** or settlement which is subject to a sub-limit in the **Primary Policy** to the extent that:
 - i. such sub-limit has not been eroded; and
 - ii. **Loss** or settlement to which such sub-limit applies is not excluded or otherwise not recognised by any other **Underlying Policy**.
2. The **Insurer** will nevertheless recognise payments by the **Underlying Insurers** in respect of any indemnity for which there is a sub-limit in any of the **Underlying Policies** where such payments have contributed to **Exhaustion**.



Exclusions

1. Known Circumstances

The **Insurer** will not be liable to indemnify the **Insured** for any **Loss**, settlement or any other payment directly or indirectly arising out of, based upon, attributable to or in consequence of:

- i. any facts or circumstances which may give rise to a **Claim** notified under any previous policy; or
- ii. any facts or circumstances which may give rise to a **Claim** declared in the **Proposal Form** or any previous proposal form or application for insurance; or
- iii. any facts or circumstances which may give rise to a **Claim** of which any **Insured** was aware, or ought reasonably to have been aware, prior to the **Policy Period**.

2. Known Claims

The **Insurer** will not be liable to indemnify the **Insured** for any **Loss**, settlement or any other payment in respect of any **Claim**:

- i. that has been notified under any previous policy; or
- ii. declared in the **Proposal Form** or any previous proposal form or application for insurance; or
- iii. known to any **Insured** prior to the **Policy Period**.

3. Retroactive Date

The **Insurer** will not be liable to indemnify the **Insured** for any **Loss**, settlement or any other payment directly or indirectly arising out of, based upon, attributable to or in consequence of any act, error or omission committed, or alleged to have been committed, prior to the **Retroactive Date**.

4. Waived or Limited Rights

The **Insurer** will not be liable to indemnify the **Insured** for any **Loss**, settlement or any other payment for which the **Insured** has in any way waived, limited or reduced their rights of recovery or contribution from any other party.



General Conditions

1. Limit of Indemnity

- i. The total liability of the **Insurer** under this **Policy** for all **Loss**, settlements or any other payments in respect of any one **Claim** and in the aggregate for all **Claims** shall in no event exceed the **Limit of Indemnity**.
- ii. Nothing in this **Policy** operates to increase the **Limit of Indemnity**.

2. Agency

- i. **Assetinsure** is not the insurer of this **Policy** but has been granted an authority by the **Insurer** to underwrite and issue this **Policy** for and on behalf of the **Insurer** under an agency agreement between **Assetinsure** and the **Insurer**.
- ii. **Assetinsure** is also authorised by the **Insurer** to:
 - a. accept all notifications in respect to **Claims**; and
 - b. accept all other notices, statements, writs, processes and other communications; and
 - c. issue all notices, statements and other communications (including but not limited to any consent required under any provision of this **Policy**);in connection with this **Policy**.
- iii. All notifications, notices, statements, writs, processes and other communications in connection with this **Policy** shall be directed to **Assetinsure** unless otherwise instructed in writing by **Assetinsure** or the **Insurer**.
- iv. The **Insured** shall, pursuant to General Condition 2(ii)(a) above, notify **Assetinsure** in writing of any **Claim** made against the **Insured** as soon as practicable during the **Policy Period**.
- v. All notifications and other correspondence in respect to any **Claim** should be forwarded to:

Claims Department
Assetinsure Pty Ltd

44 Pitt Street
Sydney NSW 2000
Australia

PO Box R299
Sydney NSW 1225
Australia



3. Conduct of Defence

- i. The **Insured** shall not settle any **Claim**, incur any costs or expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** which may be the subject of indemnity under this **Policy** without the prior written consent of the **Insurer**. The **Insurer** shall not be liable for any costs, expenses, settlement, admission, offer or payment, or assumed obligation to which it has not given prior written consent.
- ii. The **Insurer** shall be entitled at any time, including prior to **Exhaustion** of the **Underlying Limit**, to participate in the investigation, defence or settlement of any **Claim**.
- iii. The **Insured** shall use due diligence and do and concur in all things reasonably practicable to avoid or diminish any **Loss** or settlement which may be the subject of indemnity under this **Policy**.
- iv. The **Insured** shall disclose to the **Insurer** all relevant information and shall provide assistance to the **Insurer** as it may reasonably require to enable the **Insurer** to investigate and to defend any **Claim** and/ or to enable the **Insurer** to determine its liability under this **Policy**. The **Insured** shall bear their own costs incurred in complying with this clause.

4. Subrogation & Recoveries

- i. If indemnity is granted under this **Policy** in respect of any **Loss**, settlement or any other payment, the **Insurer** shall be subrogated to all rights of recovery, contribution and indemnity of the **Insured** in respect of such **Loss**, settlement or payment.
- ii. The **Insured** must always act to secure and preserve all rights of recovery, contribution and indemnity, and must provide all necessary assistance and execute all documents to enable the **Insurer** to enforce those rights referred to in General Condition 4(i).
- iii. Any amounts recovered subsequent to any payment under this **Policy** shall be applied as if recovered or received prior to such payment.

5. Notice and Authority

The **Insured** specified in Item 2 of the **Schedule** shall act on behalf of all parties comprising the **Insured** with respect to:

- i. the receipt and acknowledgement of all notices required by law; and
- ii. the giving and receiving of any notice under this **Policy**; and
- iii. the payment of premiums and other charges that may become due under this **Policy**; and
- iv. the receipt and acceptance of any endorsements issued to form a part of this **Policy**.



6. Assignment

This **Policy** and any rights hereunder cannot be assigned without the prior written consent of the **Insurer**.

7. Governing Law

Any interpretation of this **Policy** relating to its construction, validity or operation shall be made in accordance with the laws of the Commonwealth of Australia and the state or territory in which it is issued and the parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.

8. Plurals and Titles

- i. The titles of the clauses and paragraphs in this **Policy** are for convenience only and do not lend any meaning to this contract except for reference purposes.
- ii. The singular terms used in this **Policy** include the plural and vice versa, except where the context requires otherwise.
- iii. In this **Policy** words in bold (except for titles of clauses and paragraphs) have special meaning and are defined.

9. Cancellation/Termination

- i. The **Insured** may cancel this **Policy** by giving notice in writing to the **Insurer** at any time.
- ii. The **Insurer** may cancel this **Policy** in any of the relevant circumstances set out in the Insurance Contracts Act 1984, such cancellation to take effect 7 days from the time the notice of cancellation is issued by the **Insurer**.
- iii. After cancellation a refund of premium will be allowed pro-rata of 80% of the premium for the unexpired portion of the **Policy Period**.

10. Currency

All premiums, limits, retentions and other amounts under this **Policy** are expressed and payable in Australian currency.



11. Material Change to Risk

The **Insured** shall immediately notify the **Insurer** of any material change in the risk that is the subject of this **Policy** during the **Policy Period**, including but not limited to:

- i. any merger with, or acquisition of, another company, entity, partnership or business or the establishment of a subsidiary company or branch office;
- ii. the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any **Insured**;
- iii. any material change in the nature of the professional activities of any **Insured** as represented in the **Proposal Form**;
- iv. the cancellation, suspension or loss of, or the imposition of any restriction or limitation on, any licence, registration or authorisation under any legislation or regulation applicable to any aspect of the professional activities of any **Insured**.

Where such notice is given, the **Insurer** shall be entitled to negotiate with the **Insured** the terms for the continuation of this **Policy**. The **Insurer** shall also be entitled to cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984.

The **Insurer** shall be entitled to reduce any indemnity which may be available to the **Insured** under this **Policy** in respect of any **Loss**, settlement or any other payment to the extent of any prejudice suffered by the **Insurer** arising from any failure by the **Insured** to comply with this condition.

12. Validity

This **Policy** is not valid unless the **Schedule** is signed by an authorised representative of **Assetinsure**.

13. Treatment of Goods & Services Tax

The liability of the **Insurer** to the **Insured** in respect of any indemnity which may be available under this **Policy** shall be calculated taking into account any input tax credit to which the **Insured** is entitled for any relevant acquisition or would have been entitled had the **Insured** made any such relevant acquisition.



Definitions

1. Claim

shall have the same meaning as attributed to the term in the **Primary Policy**.

2. Exhaustion

means where;

- payment by the **Underlying Insurers** under the **Underlying Policies** of **Loss** or settlement for which the **Insured** is entitled to indemnity under such **Underlying Policies**; or
- where applicable, the retention by the **Insured** of any amount of **Loss** or settlement for which the **Insured** is otherwise entitled to indemnity under any **Underlying Policy** by reason of non-payment of such amount by an **Underlying Insurer** under such **Underlying Policy**;

has resulted in total exhaustion of the **Underlying Limit**.

3. Insured

means the legal entities and natural persons designated as insured under the provisions of the **Primary Policy** except as may be amended by any other **Underlying Policy**.

4. Insurer

means International Insurance Company of Hannover Limited (Australian Branch) ABN 58 129 395 544 operating as a branch of International Insurance Company of Hannover Limited (Registered Address: 1 Arlington Square, Bracknell, RG12 1WA, United Kingdom).

5. Limit of Indemnity

means the **Limit of Indemnity** specified in Item 7 of the **Schedule**.

6. Loss

shall have the same meaning as attributed to the term in the **Primary Policy** but:

- where such meaning does not include costs and expenses incurred in respect of the investigation and defence of a **Claim**, shall also include such costs and expenses that may be the subject of indemnity under the provisions of the **Primary Policy**; and
- shall also include any other cost, expense or other amount that may be the subject of indemnity under the provisions of the **Primary Policy**.



7. Policy

means this wording, the **Proposal Form**, the **Schedule** and any endorsements to the wording.

8. Policy Period

means the period of time from the inception date to the expiry date specified in Item 6 of the **Schedule**.

9. Proposal Form

means the proposal form or application for insurance dated as specified in Item 10 of the **Schedule** and:

- any additional documentation attached to such proposal form or application; and
- any documentation or other information provided to **Assetinsure** as the agent for the **Insurer** as part of any submission made by or on behalf of the **Insured** in respect of this insurance.

10. Primary Policy

means the insurance policy specified in Item 4 of the **Schedule**.

11. Retroactive Date

means the Retroactive Date specified in Item 9 of the **Schedule**.

12. Schedule

means the schedule attaching to and forming part of this **Policy**.

13. Underlying Insurer

means an insurer specified in Item 5 of the **Schedule**.

14. Underlying Policy

means an insurance policy specified in Item 5 of the **Schedule**.

15. Underlying Limit

means an amount equal to the aggregate of all limits of indemnity specified in Item 5 of the **Schedule** for all **Underlying Policies**, plus any applicable self-insured retention, excess or deductible specified in the **Primary Policy**.

(End of Policy Wording – Endorsements may apply.)