



## Tax Practice Audit Insurance Policy

### **London Australia Underwriting Pty Ltd**

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North Sydney  
Australia 2060

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## IMPORTANT NOTICES

### Insurer's Notice to the Client:

(These notices are subject to and do not affect the provisions of this **Policy**)

#### 1. **Non-Standard Policy**

The terms and conditions of this Tax Audits & Investigations Professional Expenses Insurance Policy are distinct and exclusive from the terms and conditions of all other business insurances arranged by us. It may contain provisions which are unusual or different from any other policies and you should read the entire **Policy** carefully prior to entering into any contract.

#### 2. **Legal Advice**

Your clients can e-mail the **Advice Provider** via [pfb@legalaccess.com.au](mailto:pfb@legalaccess.com.au) for legal advice on any problem related to their business, trade or profession. The advice available is limited to the law and practice of Australia.

This insurance is only available to business organisations whose **Normal Business Activities** are conducted within the **Territorial Limits**.

#### 3. **Claims Made and Notified**

3.1 This is a "claims made and notified" insurance policy, which means that it provides cover only in relation to a claim against you that is:

- (a) first made against you during the **Period of Insurance**; and
- (b) notified by you to the **Claims Administrator** during the **Period of Insurance**;

provided that you were not aware before the commencement of the **Period of Insurance** of any facts that alerted you or would have alerted a reasonable person in your position that the claim might arise (see GENERAL CONDITION 2 and EXCLUSION 3).

3.2 This **Policy** also responds to "claims circumstances" notified by you to the **Claims Administrator** during the **Period of Insurance** pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cwlth), which provides:

*Where the Client gave notice in writing to the insurer of facts that might give rise to a claim against the Client as soon as was reasonably practicable after the Client became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract.*

3.3 This **Policy** does not provide cover for any professional costs or expenses that you incur before the **Claims Administrator** accepts the claim.

3.4 Please note that, in addition to GENERAL CONDITION 2, special conditions dealing with the reporting of claims apply to claims under the Tax Audit and Investigation cover – see 'WHAT IS COVERED'.

#### 4. **Your Duty of Disclosure**

4.1 Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

4.2 You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

4.3 You do not need to tell us anything that:

- Reduces the risk we insure you for: or
- is common knowledge; or
- we know or should know as an insurer; or
- as to which compliance with your duty is waived by the insurer.

#### 4.4 **If You Do Not Tell Us Something**

4.4.1 If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

4.4.2 If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### 5. **Material Alterations of Risk**

5.1 You shall throughout the **Period of Insurance** disclose to us as soon as reasonably practicable any material change in any fact, activity or circumstance as described in the Proposal.

5.2 The Insurer is entitled to refuse to cover the additional exposure or to charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to cancel the contract or reduce its liability.

### 6. **Waived Recourse Rights**

Please note that the Policy excludes any claim or claims where and to the extent Insurers have or would have rights of recourse in respect of such claim but you have granted without the Insurers prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

### 7. **Enquiries, Complaints or Disputes**

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside of Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to London Australia Underwriting shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
 Suite 2, Level 21  
 Angel Place  
 123 Pitt Street  
 SYDNEY NSW 2000  
 Tel: 02 9223 1433 Fax: 02 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

### 8. **Service of Suit**

The **Insurer** agrees that:

In the event of a dispute arising under this policy, the **Insurer** will at your request submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court.

Any summons notice or process to be served upon the **Insurer** may be served upon:

Lloyd's Underwriters' General Representative Australia  
Suite 2  
Level 21 Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

who has authority to accept service and to enter an appearance on the **Insurer's** behalf, and who is directed at your request to give a written undertaking to you that he will enter an appearance on the **Insurer's** behalf.

If a suit is instituted against any one of the Lloyd's Underwriters, all Underwriters hereon will abide by the final decision of such court or any competent Appellate Court.

## 9. **Privacy**

Lloyd's and its agents are bound by the obligations of the Privacy Act 1998 as amended by the Privacy Amendment (Private Sector) Act 2000 (the Act). This sets out basic standards relating to the collection, use, disclosure and handling of personal information.

"Personal Information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives).

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or to make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, their relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required.

An individual who believes their privacy may have been prejudiced has a right to make a complaint about the matter. In the first instance, your complaint should be addressed to London Australia Underwriting. This may be done either verbally or in writing to The Compliance Officer, London Australia Underwriting Pty Ltd, Level 9, 140 Arthur Street, North Sydney NSW 2060.

If you are dissatisfied with the response, you may refer the matter to Lloyd's Australia Ltd, which has the appropriate authority to investigate and address matters of this nature. Lloyd's Australia Ltd can be contacted at:

Suite 2  
21 Angel Place  
123 Pitt Street  
Sydney NSW 2000  
Phone 02 9223 1433 Fax 02 9223 1466.

Lloyd's Australia Ltd will respond in writing within 15 working days, and if you remain dissatisfied with their response you will be provided at that time with the details of any other avenues for resolution that may be available to you.

**10. Terrorism Insurance Act 2003 Notice**

The Insurer has treated this Insurance (or part of it) as an Insurance to which the Terrorism Insurance Act 2003 (TIA) applies. TIA and the supporting regulations made under the Act deem cover into certain policies and provided that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in TIA.

Any coverage established by TIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in TIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, Client coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Insurers have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Insurers will not be liable for any amounts for which they are not responsible under the terms of TIA due to the application of a "reduction percentage" as defined in TIA which results in a cap on the Insurer's liability for payment for "eligible terrorism losses".

## TAX AUDITS & INVESTIGATIONS PROFESSIONAL EXPENSES INSURANCE POLICY

Effected through London Australia Underwriting Pty Ltd (hereinafter called the **Coverholder**)

THIS IS TO CERTIFY that in accordance with the authorisation granted under Contract No. B0391IL1706457 to the undersigned by certain Underwriters at Lloyds, whose definitive numbers and the proportions underwritten by them, which will be supplied on application, can be ascertained by reference to the said Contract, and in consideration of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, each for his own part and not for one another, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

## DEFINITIONS (words with special meaning)

In this Policy, unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

- 1. Advice Provider**  
means the person or company specified as “Advice Provider” in the **Schedule** or appointed subsequently by the **Insurer**, who provides the legal advice service under this Policy on the **Insurer’s** behalf.
- 2. Annual Aggregate Limit**  
means the amount specified as “Annual Aggregate Limit” in the **Schedule** being the maximum the **Insurer** will pay for all **Claims** notified under this **Policy** during the **Period of Insurance**.
- 3. ATO**  
means the Australian Taxation Office or appropriate government authority or agency authorised to conduct the relevant activity.
- 4. ATO Investigation**  
means the taking of formal action by the ATO to require a client to produce material in respect of the Client’s tax return pursuant to the ATO’s powers under the Taxation Administration Act 1953. It does not include a request from the ATO for information from the Client which is preliminary to the taking of formal action in respect of the Client’s tax return or any routine request for information.
- 5. Claim**  
means any Formal Notice received by the **Client** from the **ATO** or **State or Territory Authority** in respect of a **Fringe Benefits Audit**, **GST Audit** or **ATO Investigation** that is received during the **Period of Insurance** and notified to the **Claims Administrator** before the end of the **Period of Insurance** and arises out of the **Normal Business Activities**.

For the purposes of this definition, ‘Formal Notice’ includes any notice identified by the **ATO**, **State or Territory Authority**, the Australian Prudential Regulation Authority or the Federal Commissioner of Taxation as forming part of an Examination, including: a verification check; record keeping review/audit; review; or audit.
- 6. Claims Administrator**  
means the company specified as “Claims Administrator” in the **Schedule** or appointed subsequently by the **Insurer**, which administers the **Claims** under this **Policy** on the **Insurer’s** behalf and to whom notification of a **Claim** must be made.
- 7. Client**  
means the client(s) of the **Policyholder** whose registered office or principal trading address is within the **Territorial Limits** and who have engaged the **Policyholder’s** accountancy services.
- 8. Client’s Costs**  
means the professional fees and disbursements payable by the **Client** to the **Policyholder** in respect of the **Claim**, which have been incurred with the prior written consent of the **Claims Administrator** and whose reasonable amount is determined by agreement of the **Claims Administrator**, but excludes any such fees and disbursements recovered by the **Client**.
- 9. Court or Tribunal**  
means a court, tribunal or other statutory body of competent jurisdiction within the **Territorial Limits**.
- 10. Coverholder**  
means London Australia Underwriting Pty Ltd, which is the **Insurer’s** agent for the purposes of this **Policy**.
- 11. Cwlth**

denotes the legislation being referred to is a Commonwealth of Australia Consolidated Act.

- 12. Director**  
means a director or other board member of the **Client** where the **Client** is a company.
- 13. Excess**  
means the amount indicated in the **Schedule** to this **Policy** which the **Policyholder** must bear each and every **Claim** before the **Insurer** is obliged to make any payment of indemnity.
- 14. Fringe Benefits Audit**  
means the taking of formal action by the **ATO** to require a **Client** to produce material in respect of the **Client's** Fringe Benefits Tax payable by the **Client** under the Fringe Benefits Tax Assessment Act 1986.
- 15. GST Audit**  
means the taking of formal action by the **ATO** to require a **Client** to produce material in respect of the **Client's** GST payable under the A New Tax System (Goods and Services Tax) Act 1999.
- 16. Income Tax Legislation**  
means either or both of the Income Tax Assessment Act 1936 (**Cwlth**) and the Income Tax Assessment Act 1997 (**Cwlth**).
- 17. Insurer**  
means Certain Underwriters at Lloyd's specified as "Insurer" in the **Schedule**.
- 18. Limit of Indemnity**  
means the amount specified as "Limit of Indemnity" in the **Schedule** being the maximum sum the **Insurer** will pay in connection with the one event or series of events attributable to a single source or cause or to a single set of circumstances, from which the **Excess** is deducted, and is subject always to the **Annual Aggregate Limit**.
- 19. Normal Business Activities**  
means the **Client's** normal business activities as declared to the **Policyholder**.
- 20. Partner**  
means where the **Client** is a partnership, any of the partners within that partnership.
- 21. Period of Insurance**  
means the period specified as "Period of Insurance" in the **Schedule**.
- 22. Policy**  
means the contract of insurance between the **Insurer** and **Policyholder** as set out in this document and the **Schedule**.
- 23. Policyholder**  
means the accountant or firm of accountants regulated by their professional body/association who have declared clients to the **Insurer** for coverage under this **Policy** and who **will** act on behalf of the **Client** in respect of the resolution of a **Claim**.
- 24. Schedule**  
means the Schedule to this **Policy**.
- 25. State or Territory Authority**  
means a relevant State or Territory department, body, agency or Office of State Revenue exercising relevant Commonwealth, State or Territory legislation in bringing a **Claim** against the **Client**.
- 26. Territorial Limits**  
means the Commonwealth of Australia and its external territories and an Australian State or Territory.



**Please Note:**

Reference to any statute or statutory provision and orders or regulations there under shall include a reference to that statute, provision, order or regulation as amended, re-enacted or replaced from time to time.

Unless the context otherwise requires reference to the singular includes the plural and the plural includes the singular.

Headings are for convenience only and do not affect the interpretation or form part of this policy.

## WHAT IS COVERED

The **Insurer** provides indemnity under the following Sections of Cover subject to the terms of this **Policy** and up to but not exceeding the **Limit of Indemnity** and the **Annual Aggregate Limit**:

### Tax Audits and Investigations

1. The **Client's Costs** of a **Claim** arising directly from a **GST Audit** with the **ATO** where the **ATO** is seeking additional amounts of GST. For the purpose of this clause, the **Claim** is first made against the **Client** on the earliest of the following:
  - (a) the date on which the **ATO** requests a meeting with the **Client** or enters the **Client's** premises or expresses dissatisfaction with any of the **Client's** GST returns in writing;
  - (b) date on which the **Client** or his or her adviser first became aware, or could reasonably have become aware, that a **GST Audit** was likely to arise with the **ATO**; or
  - (c) the date on which the **Client** is served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST.
2. The **Client's Costs** of a **Claim** arising directly from a **Fringe Benefits Audit**. For the purpose of this clause, the **Claim** is first made against the **Client** on the earliest of:
  - (a) the date on which the **ATO** expresses dissatisfaction with the amounts of FBT (as defined in the Fringe Benefits Tax Assessment Act 1986) paid by the **Client** or his or her returns relating to FBT; or
  - (b) the date on which the **ATO** starts an investigation into the accuracy of FBT returns or information or into the **Client's** liability to pay additional tax because of alleged inaccuracies in such returns or information.
3. The **Client's Costs** of a **Claim** arising directly from an **ATO Investigation**.
4. The **Client's Costs** arising directly from a **Claim** being an audit or investigation undertaken by a **State or Territory Authority** in relation to:
  - (a) Payroll tax;
  - (b) Land tax; or
  - (c) Stamp duty.

### Superannuation Fund Investigations

5. The **Client's Costs** of a **Claim** arising directly from:
  - (a) an audit of the **Client's** Regulated Superannuation Fund by the Australian Prudential Regulation Authority or the Federal Commissioner of Taxation; or
  - (b) an audit arising from a **Client's** own contributions into a third party superannuation fund.

### Workers Compensation Audits

6. The **Client's Costs** arising directly from a **Claim** being an audit of a Workers Compensation return undertaken by a relevant authorised body.

### Conditions

7. In addition to the General Conditions, the **Client** must contact the **Policyholder** as soon as possible after the **Claim** is first made and comply with the advice given by the **Policyholder**;

8. The **Client** must have maintained and must continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the **ATO or State or Territory Authority** where applicable and have made all returns and payments except those which are disputed and provide all information to relevant authorities in due time;
9. The **Client** and the **Policyholder** must provide information to the **ATO or State or Territory Authority** in due time and must comply with any statutory notice requesting information which is not the subject of an appeal;
10. The **Policyholder** must immediately notify the **Claims Administrator** in writing of any invitation by the ATO or State or Territory Authority to make an offer in settlement; and
11. The **Policyholder** must provide copies of relevant correspondence between the **ATO or State or Territory Authority** and the **Policyholder** and the **Client** (including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

## WHAT IS NOT COVERED

The following exclusions apply in respect of this Policy:

### 1. Tax Disputes and Investigations

- 1.1. Any costs incurred in dealing with routine matters and reviews which do not fall within a **Claim** by the **ATO** or a **State or Territory Authority** in respect of a **GST Audit, Fringe Benefits Audit, ATO Investigation** or investigation into Payroll Tax, Land Tax or Stamp Duty, or a Superannuation Fund.
- 1.2. Any costs or legal fees incurred in respect of a court action or prosecution arising out of a **Claim**.
- 1.3. In respect of an **ATO Investigation** only:
  - 1.3.1. costs arising after the issue of a notice under **Income Tax Legislation** notifying the **Client** that the investigation has been completed; and/or
  - 1.3.2. costs incurred otherwise than wholly in connection with an **ATO Investigation** into the **Client's** business profits. Where appropriate, **Policyholder's** fees will be apportioned.
- 1.4. Any **Claim** where:
  - 1.4.1. deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive;
  - 1.4.2. the **Client** has failed to notify his or her business status to the relevant authorities within a statutory period;
  - 1.4.3. there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;
  - 1.4.4. a false representation has been made either knowingly or without belief in its truth and this has resulted in a mis-statement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made.
- 1.5. Any **Claim** arising from or relating to:
  - 1.5.1. an investigation or enquiry by the Investigations and Prosecutions Division of the **ATO** or following the transfer of an enquiry to that Division;

- 1.5.2. avoidance schemes relating to tax or superannuation contributions under the Superannuation Industry (Supervision) Act 1993 (**Cwlth**); and/or
- 1.5.3. GST refunds in countries outside Australia or Import GST.

## 2. Excess and Various Liabilities

The **Insurer** will not pay for:

- 2.1. the **Excess**;
- 2.2. compensation, damages, interest, penalties or taxes which the **Client** or his or her **Partners** or **Directors** are ordered or agree to pay.

## 3. Excluded Claims

- 3.1. Any **Claim**:
  - 3.1.1. notified to the **Claims Administrator** after the **Period of Insurance** expires;
  - 3.1.2. where the **Client** or **Policyholder's** delay during the **Period of Insurance** in notifying the **Claims Administrator** has prejudiced the **Insurer's** position;
  - 3.1.3. where, before the commencement of the **Period of Insurance**, the **Client** or **Policyholder** was aware, or should have been aware, that a **Claim** was likely to be made;
  - 3.1.4. where, before the commencement of the **Period of Insurance**, the **Client** or **Policyholder** was aware of facts or circumstances that might give rise to a **Claim**;
  - 3.1.5. more specifically insured or any amount that the **Client** cannot recover from a more specific insurance because the insurer refuses the claim for indemnity under the other insurance;
  - 3.1.6. where no **Court or Tribunal** will or would entertain a hearing on the substantive merits of the dispute or which is otherwise not within the jurisdiction of a **Court or Tribunal**.
- 3.2. Any claim for indemnity under the **Policy** which is false, fraudulent or exaggerated.
- 3.3. Any **Claim** concerning or arising from:
  - 3.3.1. a dispute between the **Policyholder, Client, Coverholder, Claims Administrator, Advice Provider** and/or **Insurer** about this **Policy**;
  - 3.3.2. an application for judicial review.
- 3.4. Any civil claim against the **Client** arising from:
  - 3.4.1. the death or injury to any person including (without limitation) any sickness, disease or any naturally occurring condition or degenerative process;
  - 3.4.2. the loss destruction or damage to property owned or occupied by or under the control of a third party.

## 4. Excluded Costs

- 4.1. All costs associated with an appeal.
- 4.2. All costs that the **Client** pays or agrees to pay before the **Claims Administrator** has accepted the **Client's** claim for indemnity in writing.
- 4.3. All costs greater than agreed by the **Claims Administrator**.
- 4.4. All costs arising from the **Client's** or **Policyholder's** unreasonable behaviour or failing.

- 4.5. All costs arising from breach of the **Client's** or **Policyholder's** duties under this **Policy** or acts of the **Client** or the **Policyholder** that cause prejudice to the **Insurer**.
- 4.6. All costs arising from the **Client** acting against or differently from the advice of the **Policyholder**.
- 4.7. All costs incurred in unnecessary correspondence.
- 4.8. All costs incurred by any party other than the **Policyholder**.

## **5. Claims not arising from Normal Business Activities**

This **Policy** does not provide cover in relation to **Claims** not arising out of the **Normal Business Activities**.

## **6. Professional Negligence Claims**

This **Policy** does not provide cover in relation to **Claims** against the **Client** or any **Partner** or **Director** for alleged negligent act, error or omission of a type normally covered under professional indemnity, directors and officers, management liability or similar insurance.

## **7. Terrorism / War and Contamination Exclusions**

- 7.1. This **Policy** does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with:
  - 7.1.1. war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
  - 7.1.2. insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
  - 7.1.3. discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;
  - 7.1.4. any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any terrorist action (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing terrorist action.
- 7.2. This **Policy** does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive.
- 7.3. This **Policy** does not cover loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss and/or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## GENERAL CONDITIONS

### 1. Premium

The **Policyholder** must have paid the relevant premium and have been declared to the **Insurer** by the **Coverholder** as having done so.

### 2. Reporting of Claims

This is a “claims made and notified” professional expenses insurance which means that, subject to the terms of this **Policy** as a whole, the following conditions apply:

#### 2.1 Claims are only covered under this **Policy** if:

2.1.1 the **Claim** is first made against the **Client** during the **Period of Insurance**; and

2.1.2 the **Policyholder** notifies the **Claims Administrator** of the **Claim** before the expiration of the **Period of Insurance**.

2.2 The **Policyholder** must notify the **Claims Administrator** by e-mail or post to the address stated in the **Schedule** immediately upon becoming aware of the **Claim** or facts and circumstances, as relevant. Delay may prejudice the **Client’s** legal position. If the **Policyholder** is in any doubt about the need to notify a **Claim** under this insurance or the eligibility to make a claim in respect of such a **Claim**, then the **Policyholder** should contact the **Claims Administrator**.

2.3 The **Policyholder** will be sent a claim form. The **Policyholder** must fill this in fully and truthfully and return it to the **Claims Administrator** and give the **Claims Administrator**, at the **Policyholder’s** own cost, any documentation, evidence, or other information that the **Claims Administrator** may reasonably need in order to assess the **Claim**.

### 3. Observance

The due observance and fulfilment of the terms, conditions and endorsements of this **Policy** insofar as they relate to anything to be done or complied with by the **Policyholder** and the truth of any statements in the **Policyholder’s** proposal and declaration shall be conditions of any liability of the **Insurer** to make any payment under this **Policy**.

### 4. Acceptance of claim

4.1 The **Insurer** will pay the **Client’s Costs** incurred after the **Claims Administrator** accepts the **Claim** in writing and the **Policyholder** confirms in writing that he or she will co-operate with the **Client** to keep to the terms of this **Policy**.

4.2 The **Insurer** will only meet the **Client’s Costs** of the **Claim** which have been agreed in advance by the **Claims Administrator** as to both amount and purpose.

4.3 If the **Policyholder** disagrees with the **Claims Administrator’s** decision, the **Policyholder** can refer the matter under the ENQUIRIES, COMPLAINTS OR DISPUTES procedure.

### 5. Appointment of Policyholder and Conduct of Claims

5.1 The **Client** will authorise and request the **Policyholder** to:

5.1.1 provide the **Claims Administrator**, as soon as reasonably possible, with:

5.1.1.1 their views on the merits of the **Claim** and the strategies and timelines to resolve the **Claim**;

5.1.1.2 their detailed estimate of the **Client’s Costs** of the **Claim**; and

5.1.1.3 any information, document or file relating to the **Claim**, whether or not privileged, that the **Claims Administrator** may ask for.

- 5.1.2 keep the **Claims Administrator** fully updated during the **Claim**:
    - 5.1.2.1 on the progress of the **Claim**, including any offers to settle;
    - 5.1.2.2 of any change in their views on the merits of the **Claim**; and
    - 5.1.2.3 of any change to their estimate of **Client's Costs**.
  - 5.2 The **Policyholder** and **Client** will co-operate at all times with:
    - 5.2.1 the **Claims Administrator** and reply promptly to any correspondence about the **Claim**; and
    - 5.2.2 the **Policyholder** and provide them with all information that they need and attend meetings and hearings whenever asked to.
  - 5.3 In the event that the **Claims Administrator** considers it appropriate to refer an issue for expert determination, the **Claims Administrator** will nominate the expert to be appointed for that purpose.
  - 5.4 The **Policyholder** or **Client** must immediately write to tell the **Claims Administrator** of any offer made to settle the **Claim** including offers relating to costs. The **Client** or **Policyholder** must not accept any offers without getting the permission of the **Claims Administrator** first. The **Claims Administrator** will not withhold consent in relation to an offer that a reasonable accountant or solicitor would recommend to a private client who is paying his or her own fees. If the **Client** does not accept an offer the **Claims Administrator** considers reasonable, the **Insurer** will not pay any further costs.
  - 5.5 All accounts for **Client's Costs** payable under this **Policy** must be submitted to the **Claims Administrator** immediately upon receipt.
  - 5.6 If any payment in respect of **Client's Costs** is made under this **Policy** the **Claims Administrator** will be subrogated to the **Client's** rights of recovery. The **Client** will not enter into any agreement, arrangement or understanding which has the effect of limiting or compromising the **Claims Administrator's** rights of subrogation.
- 6. Assessment and Recovery of Costs**
- 6.1 If the **Claims Administrator** asks, the **Client** must instruct the **Policyholder** to send all of his or her files and any bill of costs for certification by the appropriate professional body or auditing by cost consultants appointed by the **Claims Administrator**.
  - 6.2 The **Client** must:
    - 6.2.1 take reasonable steps to recover all costs awarded or agreed to be paid to the **Client**; and
    - 6.2.2 immediately pay the **Claims Administrator** any **Costs** recovered, or instruct the **Policyholder** to do so.
- 7. Notification of Alteration in Risk**
- The **Policyholder** must notify the **Coverholder** immediately of any alteration in risk which materially affects this professional expenses insurance. The **Policyholder** must also declare information in the form and at the intervals the **Claims Administrator** specifies and the **Policyholder** will pay such additional premium to, or receive a refund of premium from, the **Insurer** as the case may be.
- 8. Insolvency**
- The **Insurer** is not obliged to indemnify if, at any time the **Policyholder** is made bankrupt or goes into liquidation or files a bankruptcy petition or winding up petition or makes an arrangement with the **Policyholder's** creditors or enters into a deed of arrangement or part or all of the **Policyholder's** affairs

or property are in the control of a receiver or administrator. In the event that a **Client** is made bankrupt or goes into liquidation or files a bankruptcy petition or winding up petition or makes an arrangement with the **Client's** creditors or enters into a deed of arrangement, no **Client's Costs** will be paid in relation to that **Client** should a **Claim** arise, and no further **Client's Costs** will be paid in respect of an extant **Claim**.

**9. Agreement**

The **Insurer** is not bound by any agreement that the **Client** or **Policyholder** makes without the **Claims Administrator's** prior approval or permission.

**10. Waiver**

If the **Insurer** waives any right or breach of any term of this **Policy**, this will not waive any other right or later breach.

**11. Transferring the Client's Rights**

The **Policyholder** or **Client** cannot transfer their rights under this **Policy**.

**12. Other Parties and Interests**

The **Insurer** will not indemnify any **Client's Costs** in relation to any party not declared as a **Client**.

**13. Several Liability Notice**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

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**14. Cancellation**

The **Insurer** may cancel this **Policy** in accordance with Sections 59 and 60 of the Insurance Contracts Act 1984 (**Cwlth**) by giving the appropriate notice to the **Policyholder**.

**IMPORTANT NOTE:**

**You are advised to read this policy carefully, particularly the exclusions, conditions and limitations.**

**Should you have any queries about the cover provided please do not hesitate to contact London Australia Underwriting who will be pleased to assist with your query.**

**London Australia Underwriting is the appointed insurance intermediary.**

**In arranging this Insurance London Australia Underwriting is acting as agent for the Insurer and not as your agent. London Australia Underwriting acts under a binding authority given by the Insurer to arrange, issue and administer policies. When acting under that authority London Australia Underwriting acts as an underwriting agency on behalf of the Insurer and not for you. London Australia Underwriting is not the Insurer for this contract and they are not liable for any loss or claim. The Insurer is clearly shown on the Schedule.**