



## PROFESSIONAL INDEMNITY INSURANCE

Version: *Winsure\_PI\_08*

**THIS IS TO CERTIFY** that in accordance with the authorisation granted under the **Contact No. SPRGL0900468 to WINSURE Insurance Group Pty Ltd** by certain **Underwriters** at Lloyd's whose definitive numbers and the proportions underwritten by them, which will be supplied upon application, can be ascertained by reference to the said Contracts which bear the Seal of Lloyd's policy Signing Office, 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 heron.

### 1. INSURING CLAUSE

The **Insured** having made a **Proposal** and declaration and having paid or agreed to pay the **Premium**, the **Underwriter** agrees (subject to all of the terms and conditions of the **Policy**) to indemnify the **Insured** against any **Claim** for which the **Insured** may become legally liable and which is first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** in respect of:

The professional conduct of the **Insured's Business Activity** within the **Territorial Limits**, where the **Claim** alleges:

- 1.1. negligence or breach of duty of care;
- 1.2. negligent misstatement or negligent misrepresentation;
- 1.3. infringement of intellectual property rights including copyright, patent, registered design right or breach or misuse of confidential information;
- 1.4. any unintentional libel, slander or defamation;
- 1.5. loss of **Documents** lodged with or entrusted to the **Insured** for the purpose of storage or safe keeping provided always that the amount of any claim for costs, charges and expenses as above shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by the **Underwriter** with approval of the **Insured** and no liability shall attach hereto for any loss brought about by wear, tear and other gradually operating causes.
- 1.6. dishonesty of any employee, but excluding any **Claim** resulting from the dishonest, fraudulent, criminal or malicious acts or omissions committed after the **Insured** discovered, or could reasonably have discovered or suspected, improper conduct by the employee. No indemnity will be provided to any person committing or condoning any dishonest, fraudulent, malicious or criminal acts or omissions. This Extension excludes claims for loss of money; negotiable instruments; bearer bonds or coupons; stamps; bank or currency notes.
- 1.7. any **Claim** made against the **Insured** under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW) or similar legislation in other States, and

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which arise from misleading or deceptive conduct not being deliberate or fraudulent conduct PROVIDED THAT:

- 1.7.1. this extension of indemnity shall not include claims made under the penal or criminal provisions of those Acts or legislation;
- 1.7.2. such conduct arises from actual or alleged breach of professional duty as defined in Insuring Clause above.

## 2. DEFENCE COSTS

Subject to the terms and conditions of this **Policy**, the **Underwriter** agrees to indemnify the **Insured** for **Defence Costs** in respect of any **Claim(s)** covered under clause 1 above.

## 3. NEWLY CREATED OR ACQUIRED ENTITY OR SUBSIDIARY

3.1. Subject to the terms and conditions of this Policy, the **Underwriter** agrees to indemnify any entity or Subsidiary undertaking the same or similar **Business Activity** which is acquired or created during the **Period of Insurance** for a period of up to forty-five (45) days (but never beyond the expiry date of the **Period of Insurance**) but only in respect of any negligence or breach of duty of care; negligent misstatement or negligent misrepresentation committed subsequent to the date of acquisition or creation (unless otherwise agreed in writing by the **Underwriter**) PROVIDED ALWAYS THAT notification of any such acquisition or creation of the entity or Subsidiary after inception of this **Policy** shall be given in writing within forty-five (45) days to the **Underwriter** together with appropriate underwriting information as required by the **Underwriter** who will be at liberty to charge an additional premium and impose special conditions in respect of such entity or Subsidiary.

For the purpose of this clause Subsidiary shall mean:

- 3.1.1. any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the **Insured** specified in the **Policy**; or
- 3.1.2. any entity over which the **Insured** specified in the **Policy** is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such entity.

## 4. JOINT VENTURE

Subject to the terms and conditions of this **Policy**, the **Underwriter** agrees to indemnify the **Insured** as a joint venturer or as a partner PROVIDED ALWAYS that such cover does not extend to any co-joint venturer or co-partner of the **Insured** in the Joint Venture in respect of any **Claim(s)** covered under Insuring Clause 1.

## 5. RUN-OFF OF DIVESTED ENTITIES

Where a covered entity or subsidiary ceases to exist or to operate or is acquired by another, then the **Underwriter** agrees that the coverage provided under this **Policy** with respect to that entity of the **Insured** will continue until the expiry date of the **Period of Insurance**, PROVIDED ALWAYS that such coverage will only apply in respect of the **Insured's** liability arising out of any **Business Activity** happening prior to the effective date that such entity or subsidiary ceased to exist or to operate or was acquired by another entity, unless otherwise agreed by the **Underwriter** in writing.

## 6. COSTS OF EXPENSES – OFFICIAL INQUIRIES

Subject to the terms and conditions of this **Policy**, the **Underwriter** agrees to indemnify the **Insured** for the costs incurred by the **Underwriter**, or the reasonable costs incurred by the **Insured** with **Underwriters** written consent, of the **Insured's** legal representation at any inquiry (including any coronial inquiry or any inquiry under the disciplinary rules of a professional association of which the **Insured** is a member) or other similar processes relating to or connected with the **Insured's Business Activity**, which the **Insured** is legally compelled to attend PROVIDED THAT:

- (i) the process is ordered or commissioned during the **Period of Insurance**;
- (ii) The **Underwriter** shall be entitled to nominate the legal representation;
- (iii) the **Insured** having notified the **Underwriter** in writing within the Period of Insurance and within 28 days of having received notice of the inquiry; and
- (iv) the aggregate liability of the **Underwriter** for all **Claim(s)** under this Clause shall not exceed \$100,000.

## 7. RETROACTIVE DATE

7.1 Unlimited Retroactive date – if no Retroactive Date is specified in the Schedule or if the Retroactive Date is specified in the **Schedule** as Unlimited, this **Policy** shall provide indemnity in respect of **Claim(s)** irrespective of when such **Claim(s)** were committed or were alleged to have been committed.

This is subject to:

- (i) the **Insured** having continuous insurance cover from this date to the inception of the current **Policy** and the **Underwriter** will only indemnify the **Insured** for an amount up to the **Limits of Indemnity** specified in prior **Policies** or the **Limit of Indemnity** under this **Policy** whichever is the lesser, and
- (ii) the **Insured** providing evidence of prior **Policies** to the satisfaction of the **Underwriter**.

7.2 Limited Retroactive Date – where a retroactive date is specified in the **Schedule**, then this **Policy** shall only provide indemnity in respect of **Claim(s)** committed or alleged to have been committed after the **Retroactive Date**.

## 8 DEFINITIONS AND INTERPRETATION

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

- 8.1.1 **Business Activity** means the activity(ies) shown in the **Schedule**, which the **Insured** performs in the ordinary course of business for which the **Insured** is remunerated or other activities necessary to the conduct thereof.
- 8.1.2 **Claim** means an assertion of a right to compensation or damages from the **Insured**, including by any civil proceeding or demand against the **Insured**. Where two, or a series of, **Claims** arise from a circumstance or occurrence or a series of circumstances or occurrences consequent upon or attributable to one source or original cause, they are deemed to be one **Claim** for the purpose of the **Limit of Indemnity** and the **Excess** applicable under the **Policy**.
- 8.1.3 **Contract** shall mean a written contract between the **Insured** and a **Contractor** in regards to the **Insured's Business Activity** and does not include any form of verbal agreement unless it is subsequently reduced to a formal written document and signed by the **Insured** and the **Contractor**.
- 8.1.4 **Contractor** shall mean a person or other entity contracted to **the Insured** and engaged in the **Insured's Business Activity** pursuant to a **Contract** between the **Insured** and that person or other entity.

- 8.1.5 **Defence Costs** means reasonable costs and expenses for which the **Insured** is legally liable and/or which are incurred by the **Insured** with the **Underwriters** consent and agreement in the investigation, settlement or defence of a **Claim** covered by this **Policy**.
- 8.1.6 **Document** means agreements, plans, records, deeds, books, letters, **Policies**, **Documents** or forms of any description whether written, printed or reproduced by any other method or means excluding bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.
- 8.1.7 **Excess** means the amount stated in the **Schedule** which the **Insured** must bear in respect of each **Claim** inclusive of Defence Costs, before the **Underwriter** is liable to make any payment under this **Policy**.
- 8.1.8 **Inception Date** means the date on which the **Insured's** insurance cover with the **Underwriter** commences, as specified in the **Schedule**.
- 8.1.9 **Insured** means:
- (i) the person, persons, partnership, company, corporation, statutory authority or other entity specified in the **Schedule** as **Insured**;
  - (ii) any predecessor in business of any person or entity in (i);
  - (iii) any person who is, was, becomes or ceases to be a principal, partner, **Director**, **Officer**, **Partner** or employee of any person, persons, partnership, company, corporation, statutory authority or other entity specified in the **Schedule** as the **Insured**, but in each case solely in respect of a liability arising from activity for and on behalf of that entity; and
  - (iv) any executor, administrator, heir or trustee of any person in (i), (ii) or (iii).
- 8.1.10 **"The Underwriter"** means the entity referred to as such in the Schedule
- 8.1.11 **Limit of Indemnity** means the maximum amount payable by the **Underwriter** under this **Policy** as stated in the **Schedule**, inclusive of claimants' costs fees and expenses and **Defence Costs**, irrespective of the number of Claims their quantum or timing, or the number of **Insured's** claiming on the **Policy**.
- 8.1.12 **Period of Insurance** means from the **Inception Date** to the date on which insurance cover ceases, as stated in the **Schedule**.
- 8.1.13 **Policy** means this policy of insurance between the **Underwriter** and **Insured**, together with the **Schedule** and **Proposal**.
- 8.1.14 **Premium** means the amount payable by the **Insured** for this **Policy** as stated in the **Schedule**.
- 8.1.15 **Product** means any tangible property after it has left the custody or control of the **Insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.
- 8.1.16 **Proposal** means the **Proposal** for insurance provided under this **Policy** including any documentation or information submitted in support by the **Insured** to the **Underwriter**.
- 8.1.17 **Schedule** means the **Schedule** of insurance issued by the **Underwriter** specifying inter alia the **Policy** number, **Premium**, the **Insured's** name, the **Insured's Business Activity**, the **Limit of Indemnity** and the **Period of Insurance**.

- 8.1.18 **Territorial Limits** means Worldwide, excluding the United States of America or the Dominion of Canada.
- 8.1.19 **Terrorism** means shall mean an act or acts (whether threatened or actual) of any person or persons involving the causing or occasioning of threatening of harm of whatever nature and by whatever means made or claimed to be made in whole or in part for political, religious, ideological or similar purposes.
- 8.2 This **Policy** and **Schedule** shall be read together.
- 8.3 The headings are for ease of reference only and do not affect its interpretation.
- 8.4 References to any statute, statutory provision, Order or Rule include a reference to that legislation or those Rules as amended, extended, consolidated or replaced from time to time (whether before, on or after the **Inception Date** of this **Policy**) and include any former legislation or Rules which it re-enacts, consolidates or replaces and any order, regulation, instrument or other subordinate legislation made under the relevant legislation or rules.
- 8.5 Unless the context otherwise requires, words denoting the singular shall include the plural and vice-versa, references to any gender shall include all other genders.

## 9 EXCLUSIONS

The **Underwriter** shall not indemnify the **Insured** in respect of any **Claim**:

- 9.1 involving Injury to any person or damage to property (except in so far as indemnified by the loss of **Documents** cover);
- 9.2 made against the **Insured** by or on behalf of any entity in which the **Insured** exercises a financial or managerial interest;
- 9.3 arising from the **Insured's** insolvency or impecuniosity or lack of financial resources;
- 9.4 arising from services undertaken prior to the **Insured's** incorporation;
- 9.5 in respect of any fees claimed back or withheld by a customer of the **Insured** arising from non-performance of the **Insured's** contractual obligations, unless such fees form part of a compromise settlement of a **Claim**;
- 9.6 arising from the recommendation or specification of any goods or **Products** where their use is not in accordance with the manufacturer's specification;
- 9.7 arising from the manufacture, installation, maintenance or servicing of any **Product** sold, supplied or distributed by the **Insured**;
- 9.8 arising from obscenity, blasphemy or pornographic material;

## 10 GENERAL EXCLUSIONS

The **Underwriter** shall not indemnify the **Insured** in respect of any **Claim**:

- 10.1 alleging any neglect, act, error or omission committed or alleged to have been committed occurring or alleged to have occurred prior to the Retroactive Date stated in the **Schedule**.
- 10.2 first made before the **Inception Date**;
- 10.3 arising from a potential **Claim** or circumstance known to the **Insured** and which the **Insured** knew or ought reasonably to have known, prior to inception of this **Policy**, might result in a **Claim** against the **Insured**;

- 10.4 or potential **Claim** or circumstance which has, or ought to have, been notified under any other **Policy** of insurance prior to the **Inception Date**;
- 10.5 made against any **Insured** by any other **Insured** in any capacity whatsoever;
- 10.6 in relation of any fines, penalties, aggravated, punitive or exemplary **Damages** or other non-compensatory **Damages**, including but not limited to multiplications of compensatory awards or **Damages**;
- 10.7 or potential **Claim** or circumstance in respect of which the **Insured** is, or would be but for the existence of this **Policy**, entitled to indemnity under any other **Policy** of insurance;
- 10.8 or potential **Claim** or circumstance in any way connected with the United States of America or Canada or their territories or laws;
- 10.9 based on or arising out of liquidated **Damages** clauses, penalty clauses or performance warranties, unless proven by the **Insured** that such liability would have attached in the absence of such clauses or warranties;
- 10.10 directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be or declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- 10.11 directly or indirectly caused by or contributed to by or arising from:
  - 10.11.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - 10.11.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 10.12 directly or indirectly arising from or in any way connected with asbestos.
- 10.13 directly or indirectly caused or occasioned by or happening through or in consequence of **Terrorism** or any action taken in controlling, preventing or suppressing any act or acts of **Terrorism** or in any way relating thereto.

## 11 OBSERVANCE OF TERMS

- 11.1 The **Insured** must observe and comply with the terms and conditions of this **Policy**. Any term or condition of this **Policy** insofar as it relates to anything to be done or complied with by the **Insured** shall be a condition precedent to the **Underwriters** liability to make any payment under this **Policy**.
- 11.2 The **Underwriter** shall only be liable to bear GST to the extent that GST is irrecoverable by the **Insured**. For the avoidance of doubt, any element of GST which the **Underwriter** is obliged to pay shall be encompassed within the **Limit of Indemnity**.

## 12 CLAIMS CONDITIONS

- 12.1 The **Insured** must notify the **Underwriter** in writing as soon as possible of a **Claim**. Such notification must be made during the **Period of Insurance** and shall be sent to **WINSURE INSURANCE GROUP**.
- 12.2 The **Insured** shall not admit liability for or negotiate the settlement of any **Claim**, or incur any **Defence Costs**, without the written consent of the **Underwriter**. The **Insured** shall do nothing which may prejudice the rights of the **Underwriter**, including but not limited to preserving all possible defences, and rights of contribution or indemnity, in respect of a **Claim**.

- 12.3 The **Insured** must, at its own expense, provide the **Underwriter** with all assistance and co-operation reasonably required by the **Underwriter** to enable the **Underwriter** to determine the **Insured's** entitlement to indemnity under the **Policy**, and in the investigation, settlement and/or defence of any **Claim**.
- 12.4 The **Underwriter** reserves the right, but does not have an obligation, to take control of and conduct in the **Insured's** name the investigation, settlement or defence of any **Claim**. The **Underwriter** shall be entitled to prosecute for its own benefit any **Claim** for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any such **Claim** and the **Insured** shall give all such information and assistance as the **Underwriter** may require.
- 12.5 A **Claim** against the **Insured** will only be defended if in the opinion of the **Underwriter** there is a reasonable prospect of success and after taking account of the commercial considerations and economics of defending such **Claim**

### 13 GENERAL CONDITIONS

#### 13.1 REASONABLE PRECAUTIONS

The **Insured** at its own expense shall:

- 13.1.1 take all reasonable precautions to prevent Injury, loss of or damage to property and cease any activity which may give rise to liability under this **Policy**;
- 13.1.2 exercise care in the selection and supervision of employees;
- 13.1.3 as soon as possible after discovery cause any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require;
- 13.1.4 comply with all statutory requirements and other safety regulations imposed by any authority.

#### 13.2 ALTERATION

The **Insured** shall give notice to the **Underwriter** as soon as possible of any alteration which materially affects the risk.

#### 13.3 CANCELLATION

The **Underwriter** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

#### 13.4 DISCHARGE OF LIABILITY

The **Underwriter** may at any time pay the **Limit of Indemnity** (after the deduction of any sum already paid) or any lesser amount for which a **Claim** can be settled and shall be under no further liability except for the payment of **Defence Costs** incurred to the date of payment provided that the **Limit of Indemnity** so allows.

#### 13.5 EXCESS

- 13.5.1 The **Underwriter** shall not be liable for the amount of the **Excess** stated in the **Schedule** in respect of the first amount of each and every **Claim** including **Defence Costs**.
- 13.5.2 The **Insured** shall not affect insurance in respect of the **Excess**.

#### 13.6 ADJUSTMENT OF PREMIUM

- 13.6.1 If the **Premium** has been calculated on estimates given by the **Insured** the **Insured** shall keep an accurate record containing all relevant particulars which shall be available to the **Underwriter** for inspection.
- 13.6.2 Within one month of the expiry of each **Period of Insurance** the **Insured** shall supply to the **Underwriter** an accurate statement in the form required so that the **Premium** for that period can be calculated and the difference paid by or allowed to the **Insured**.
- 13.6.3 Should the **Insured** fail to supply such a statement within one month of the expiry of the **Period of Insurance** the **Underwriter** shall be entitled if they so wish to charge an additional **Premium** in respect of that **Period of Insurance**.

### 13.7 GOVERNING LAW AND JURISDICTION

This Policy shall, at all times and in all respects, be governed by and subject to the laws of the Commonwealth of Australia, including but not limited to the Insurance Contracts Act 1984 and the **Insured** and the **Underwriter** agree to submit to the jurisdiction of competent Australian Courts in relation to all matters arising under or in connection with it. This Condition shall not preclude the parties from agreeing to submit any dispute to Arbitration, or to any other form of Alternative Dispute Resolution, after it has arisen.

### 13.8 The Underwriter hereon agrees that:-

(i) In the event of a dispute arising under this policy, the **Underwriter** at the request of the **Insured** will 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.

(ii) Any summons notice or process to be served upon the **Underwriter** may be served upon.

Lloyd's General Representative in Australia  
Lloyd's Australia Limited  
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Angel Place,  
123 Pitt Street,  
Sydney NSW 2000  
Australia

Who has authority to accept service and to enter an appearance on the **Underwriters** behalf.

(iii) If a suit is instituted against any one of the **Underwriters** all **Underwriters** hereon will abide by the final decision of such court or any competent Appellate court.

### 13.9 CROSS LIABILITIES

Where there is more than one party named as the **Insured** in the **Schedule**, this **Policy** will apply separately to each such **Insured** in the same manner and to the same extent as if a separate **Policy** had been issued to each **Insured** and the **Underwriter** agrees to waive all rights of subrogation against any of these parties.

Provided that the total amount payable under this **Policy** does not exceed the **Limit of Indemnity**.

### 13.10 SUBROGATION

The **Underwriter** shall be subrogated to the **Insured's** rights of recovery in relation to any **Claim** or loss paid or payable under this **Policy**. The **Insured** shall co-operate fully with the **Underwriter** in

connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the **Underwriters** rights of subrogation.

### 13.11 ASSIGNMENT

13.11.1 The **Insured** shall not be entitled to assign the benefit of this **Policy** without the **Underwriters** prior written consent.

13.11.2 This **Policy** shall be for the exclusive benefit of the **Insured** and that in no event shall anyone other than the **Insured** have any right of action under this **Policy**.

### 13.12 SEVERABILITY AND NON-IMPUTATION

Where the **Insured** is comprised of more than one person or entity and one or more of those persons or entities:

- (i) failed to comply with the duty of disclosure under section 21 of the Insurance Contracts Act 1984;
  - (ii) made a misrepresentation to us before this **Policy** was entered into; or
  - (iii) failed to comply with a term of this **Policy**.
- the right of another person or entity to cover under this **Policy** shall not be prejudiced as a result PROVIDED THAT the other person or entity:
- (i) was entirely innocent of and had no prior knowledge of the relevant conduct; and
  - (ii) notifies the **Underwriter** in writing of all the facts known to the person or entity as soon as is reasonably practicable upon becoming aware of the relevant conduct.

## OPTIONAL EXTENSIONS

### THESE EXTENSIONS ARE NOT INCLUDED IN THE INSURANCE UNLESS INDICATED IN THE SCHEDULE

#### 1. AUTOMATIC REINSTATEMENT

It is agreed that upon notification to the **Underwriter** during the **Period of Insurance** of any **Claim** made against the **Insured**, this **Policy** shall be deemed to be reinstated for such amount, if any as may be ultimately paid by the **Underwriter** in respect of such **Claim**, so as to remain in force during the **Period of Insurance** for the **Limit of Indemnity** stated in the **Schedule** of this **Policy**, provided always that the aggregate of the amounts so reinstated shall not exceed an amount equal to the said **Limit of Indemnity**.

It is the intention of this **Policy** and this extension that the sums thus reinstated shall provide cover in respect of subsequent claims or losses in the same **Period of Insurance**, which are totally unrelated to the claim(s) already notified.

Under no circumstances will the **Underwriter** be liable under this **Policy** to pay more than twice the **Limit of Indemnity** for all **Claims** made during any one **Period of Insurance** including all costs and expenses incurred in the defence or settlement of such **Claims**.

#### 2. CONTRACTOR

This **Policy** is extended to indemnify the **Insured** in respect to claims arising from any negligence or breach of duty of care; negligent misstatement or negligent misrepresentation of a **Contractor** in the professional conduct of the **Insured's Business Activity** within the **Territorial Limits**. This extension does not alter the definition of the **Insured**.

**THIS IS TO CERTIFY** that in accordance with the authorisation granted under the **Contact No. SPRGL0800468** to **WINSURE Insurance Group Pty Ltd** by certain **Underwriters** at Lloyd's whose definitive

numbers and the proportions underwritten by them, which will be supplied upon application, can be ascertained by reference to the said Contracts which bear the Seal of Lloyd's policy Signing Office, 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 heron.

**In witness whereof this insurance has been signed in Sydney, 21 May 2008**

**WINSURE Insurance Group Pty Ltd**



Matthew Boon

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**General Manager / Director**