

# Accountants Professional Indemnity

## Policy wording





## IMPORTANT NOTICES

### Claims Made Insurance

This policy is issued by Delta Insurance Australia Pty Ltd ('Delta, 'we', 'our' or 'us') on a claims made and notified basis. Accordingly, this Policy will only apply to Claims first made during the Policy Period or Extended Reporting Period, if applicable, and notified to Delta in writing during the Policy Period or Extended Reporting Period, if applicable. This Policy may not provide cover for any Claims or Events made against you during the Policy Period if at any time prior to the commencement of the Policy Period you became aware of facts which might give rise to those Claims being made against you.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. It provides that where the insured becomes aware of any facts that might give rise to a Claim against the insured, provided that the insured notifies the insurer in writing of those facts as soon as reasonably practicable after the insured becomes aware of those facts before the Policy Period expires, the insurer is not relieved of liability under the contract in respect of a Claim which arises out of those facts, merely because when the Claim is made, it is made after the Policy Period has expired.

### Insured's Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into an insurance contract, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to insure to you. You have the same duty to disclose before you renew, extend, vary or reinstate an insurance contract.

However, you do not need to tell the insurer anything that:

- reduces the risk the insurer insures you for; or
- is common knowledge; or
- your insurer knows or should know as an insurer; or
- the insurer waives your duty to tell them about.

### If you do not tell the insurer something

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.

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

### Unusual terms

Please note General Condition 6.11 which prevents the insurer from providing cover, benefits or paying claims where that would expose the insurer to sanctions, prohibitions or restrictions.

### Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (Privacy Act). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

### Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

### Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse, loss and from unauthorised access, modification, or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

### Complaints Procedure

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance Claim, please let us know and we will attempt to resolve your concerns in accordance with our internal dispute resolution procedure.

Please contact Delta Insurance Australia Pty Ltd in the first instance:

Managing Director

Delta Insurance Australia Pty Ltd

Email: [complaints@deltainsurance.com.au](mailto:complaints@deltainsurance.com.au)

Phone: 07 3017 4720

Post: GPO Box 1832, Brisbane, QLD 4001

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678

Post: GPO Box 3 Melbourne VIC 3001

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

Details of AFCA's complaint procedures and any relevant time limits are available at [www.afca.org.au](http://www.afca.org.au). AFCA is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission that provides financial services complaint resolution for free to consumers.

### Goods and Services Tax (GST)

Where you are registered for GST, you must tell Delta the nature and extent of any entitlement you have to an input tax credit at or before the time a Claim is made under this Policy. Where the Insurer makes a payment under this Policy, the amount of the payment will be reduced by the amount of any input tax credit to which you are or may, in the opinion of the Insurer, be entitled to claim.

The amount of the applicable Retention is calculated after deduction of the amount of any input tax credit that you are or may, in opinion of the Insurer be entitled to claim.

The Insurer will not be liable to pay any GST, or any fine, penalty or charge that you may be liable for arising from your misrepresentation of or failure to disclose the proper input tax credit entitlement on the premium relating to this Policy.

GST and 'input tax credit' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### Interpretation

The definitions can be found in Section 6 of this Policy. Defined words appear in bold print. Reference to:

- the singular includes the plural and vice versa;
- the masculine includes the feminine and vice versa;
- a statute, statutory instrument, regulation or order includes any amendment, superseding, substitution, replacement or re-enactment of that statute, statutory instrument, regulation or order. References to any statute, statutory instrument, regulation or order shall also refer to such statute, statutory instrument, regulation or order commencing after the date of this Policy which contain similar subject matter to the

statute, statutory instrument, regulation or order referred to in this Policy, regardless of whether the statute, statutory instrument, regulation or order is expressed or intended to supersede, substitute or replace the relevant statute, statutory instrument, regulation or order.;

- any reference to a “person” (but not a “natural person”) includes a natural person, entity or organisation.

### Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses and discloses your information, please read our privacy policy located at [www.deltainsurance.com.au](http://www.deltainsurance.com.au) or alternatively you can contact us at 07 3017 4720.

THIS POLICY SETS OUT THE TERMS UPON WHICH THE INSURER AGREES TO INSURE THE INSURED IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM AND IN RELIANCE UPON ALL THE STATEMENTS MADE IN THE PROPOSAL FORM. THE INSURING CLAUSE AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.

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## ACCOUNTANTS PROFESSIONAL INDEMNITY INSURANCE

In consideration of the payment of the **Premium**, and subject to the **Conditions**, the **Insurer** and the **Policyholder** on behalf of all **Insureds** agree as follows:

### 1. Insuring Clause

1.1 The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** resulting from any **Claim** for any civil liability first made against the **Insured** and reported to the **Insurer** during the **Policy Period** or the **Extended Reporting Period**, if applicable, arising from the performance of **Professional Services**.

### 2. Automatic Extensions

The following Extensions are automatically included unless otherwise stated in the **Schedule** or any **Endorsement** to the **Policy**. The Extensions form part of the **Policy** and are subject to its **Conditions**. None of the Extensions increase the **Limit**, unless expressly stated otherwise.

#### 2.1 Insurance Clarification

For the purpose of clarifying the scope of cover under Insuring Clause 1.1, civil liability is extended specifically to the following:

- a Breach of Confidentiality; or
- b Breach of Fiduciary Duty; or
- c **Breach of Warranties and Conditions**; or
- d **Consumer Protection Legislation**; or
- e **Defamation**; or
- f **Intellectual Property Infringement**

#### 2.2 Auditing Standards

The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** resulting from any **Claim** for any civil liability arising from any failure of the **Insured** to conduct an audit in accordance with the auditing standards established under the Corporations Act 2001 (Cth) provided that **Insurers** will not be liable to indemnify the **Insured** for any **Claim** that arises directly or indirectly from or in connection with:

- a any dishonest, fraudulent, reckless or

malicious act or omission of any **Insured** or any **Consultant**; or

- b the wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by any **Insured** or **Consultant**.

#### 2.3 Advancement of Costs

The **Insurer** shall advance to any **Insured** the:

- a **Defence Costs** in respect of any **Claim**; or
- b **Investigation Costs** in respect of any **Investigation**,

prior to resolution of such **Claim** or **Investigation** but no later than thirty (30) days after the **Insurer** receives the **Insured's** request for payment. If **Defence Costs** or **Investigation Costs** are advanced by the **Insurer**, the **Insured** will repay all such amounts to the **Insurer**, severally according to its respective interest, in the event and to the extent it is determined that the **Insured** is ultimately not entitled under the **Policy** to such payments.

#### 2.4 Compensation for Court Attendance

The **Insurer** shall pay to or on behalf of any **Insured** the attendance costs of:

- a the legal advisors acting on or behalf of the **Insured** with the **Consent** of the **Insurer**; or
- b any **Employee** or a director, officer, partner or principal of the **Insured** required to attend any court, tribunal, arbitration, adjudication, mediation or other hearing as a witness; or
- c any **Employee** or a director, officer, partner or principal of the **Insured** attend at the **Insurers** request, as an interested party and any mediation;

in connection with a **Claim** made against the **Insured** that is covered by the **Policy**.

The **Insurer's** maximum liability under this Extension 2.4 will not exceed the **Sub-Limit** of \$500 per person per day and \$250,000 in the aggregate during the **Policy Period**.

## 2.5 Continuous Cover

Notwithstanding Exclusion 4.16 Prior Matters, this **Policy** extends cover for any **Claim** or **Investigation** arising out of, based upon or attributable to any fact, circumstance, act or omission which could have been, but was not, notified by the **Insured** under any **Prior Policy** and which is first notified to the **Insurer** during the **Policy Period**, provided that:

- a the failure by the **Insured** to notify such fact, circumstance, act or omission under any **Prior Policy** was not fraudulent; and
- b the **Insured** has been continuously insured, without interruption, under a **Prior Policy** and was insured under a **Prior Policy** at the time the **Insured** first became aware of the fact, circumstance, act or omission; and
- c the **Insurer** has the discretion to apply the **Conditions** of the **Prior Policy** in effect when the fact, circumstance, act or omission first arose (including but not limited to, the relevant available limits of liability under the **Prior Policy** as eroded and entitlement to indemnity); and
- d the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Insurer** as a result of the **Insured's** failure to notify such fact, circumstance, act or omission under any **Prior Policy**.

## 2.6 Contractual Liability

Notwithstanding Exclusion 4.3(a) Assumed and Financial Liabilities, the **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** resulting from any **Claim** for civil liability under an indemnity and/or hold harmless term of a contract to the extent that such civil liability results from the **Insured's** performance of **Professional Services**.

## 2.7 Costs in Addition

**Defence Costs** covered under this **Policy** are payable in addition to the **Limit** and payment by the **Insurer** of any such **Defence Costs** will not reduce the **Limit**.

In the event that the **Insured's** liability exceeds the **Limit**, the **Insurer's** liability in respect of **Defence Costs** covered under this **Policy** is limited to that proportion of such **Defence Costs** as the **Limit**

bears to the total amount of a final judgment, award or settlement sum.

## 2.8 Extended Reporting Period

- a If this **Policy** is not renewed or is cancelled by the **Insurer**, other than for the non-payment of **Premium**, the **Policyholder** shall be automatically entitled, at no additional premium, to an **Extended Reporting Period** of thirty (30) days from the **Expiry Date** or effective date of cancellation, or until the **Policyholder** effects a replacement policy, whichever is the lesser period, provided that:
  - i an offer to renew this **Policy** by the **Insurer** which contains terms, conditions or premium that are different from the **Conditions** will not constitute a refusal by the **Insurer** to renew this **Policy**;
  - ii an **Insured** may provide notification of a **Claim** or **Investigation** after the **Expiry Date** and during the **Extended Reporting Period** but only in respect a **Claim** or **Investigation** that arises from any **Acts** occurring prior to the **Expiry Date**.
- b If the **Policyholder** does not renew or replace this **Policy** with similar cover, the **Policyholder** may purchase an **Extended Reporting Period** of the number of months stated in Item 6 of the **Schedule**, provided that:
  - i the right to purchase the **Extended Reporting Period** must be exercised by written notice to the **Insurer** within thirty (30) days after the **Expiry Date**, otherwise the **Insured** will forfeit such right;
  - ii the **Extended Reporting Period** will only become effective upon payment of such additional premium as the **Insurer** will require;
  - iii the **Extended Reporting Period** will commence on the **Expiry Date**;
  - iv if the **Extended Reporting Period** is purchased, an **Insured** may provide notification of a **Claim** or **Investigation** after the **Expiry Date** and during the **Extended Reporting Period** but only in respect a **Claim** or **Investigation** that arises from any **Acts** occurring prior to the **Expiry Date**.

- c The **Insurer** shall not be liable to make any payment in respect of a **Claim** or **Investigation** notified during the **Extended Reporting Period**, if at any time the **Insured** obtains any replacement professional liability insurance after the **Expiry Date**.

## 2.9 External Appointments

Notwithstanding Exclusion 4.13 Management Liability, the **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** that the **Insured** incurs in respect of a **Claim** for any civil liability arising out of any appointments held by the **Insured** individually when acting as a trustee, executor, receiver, manager, liquidator, administrator, director or secretary of a proprietary company or a charity provided that:

- a the fees received from such appointments form part of the **Professional Services** conducted on the **Insureds** behalf; or
- b where no fee is received, the appointment is held on behalf of or with the consent of the **Policyholder** or any **Subsidiary**.

## 2.10 Fraud and Dishonesty

Notwithstanding Exclusion 4.9 Fraud, Dishonesty and Intentional Acts, the **Insurer** shall pay to or on behalf of any **Insured** the:

- a **Defence Costs** and **Damages** which such **Insured** incurs resulting from any **Claim** for any civil liability; and
- b **Investigation Costs** in respect of any **Investigation**, first commenced against the **Insured** and reported to the **Insurer** during the **Policy Period** or the **Extended Reporting Period**, if applicable,

arising from any fraudulent, dishonest or reckless conduct by any **Employee** in the performance of **Professional Services**, provided that no cover shall be provided to any person committing, or condoning, expressly or implicitly, such fraudulent, dishonest or reckless conduct.

## 2.11 Investigation Costs

The **Insurer** shall pay to or on behalf of any **Insured** **Investigation Costs** which the **Insured** incurs with **Consent** for any **Investigation** first commenced against the **Insured** and reported

to the **Insurer** during the **Policy Period** or the **Extended Reporting Period**, if applicable.

The **Insurer's** maximum aggregate liability for the **Policy Period** under this Extension 2.11 will not exceed the **Sub-Limit** stated in Item 5 of the **Schedule**.

## 2.12 Joint Ventures

The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** which the **Insured** incurs in respect of a **Claim** for any civil liability arising from the performance of **Professional Services** in the **Insured's** capacity as a joint venture partner but only to the extent of the **Insured's** own liability as a joint venture partner, and not the liability of any other joint venture partner.

## 2.13 Limitation of Liability Contracts

Notwithstanding General Condition 6.10 Subrogation and Recoveries, where the **Insured** enters into a written contract with another party:

- a which relates to the performance of **Professional Services**; and
- b which excludes or limits the liability of such party,

the **Insurer** agrees that the **Insured's** right to indemnity under this **Policy** will not be prejudiced by virtue of the exclusion or limitation of liability of such other party. However, the cover provided by this Extension 2.13 does not apply to contracts (whether written or not written) entered into as a result of a dispute which involves the **Insured** in any way.

## 2.14 Loss Mitigation Costs

Notwithstanding Exclusion 4.3(f) Assumed Liabilities, the **Insurer** shall pay to or on behalf of any **Insured** **Mitigation Costs** which the **Insured** incurs with **Consent** to prevent any **Claim** for civil liability being made against the **Insured** by a dissatisfied customer of the **Insured** where, in the absence of payment of such **Mitigation Costs**, such **Claim** would have been made, provided that:

- a the burden of proving that any **Claim** for civil liability would have been made and covered

under this **Policy**, and that the dissatisfied customer has agreed not to make such **Claim**, will rest with the **Insured**; and

- b** the **Insurer** agrees that the amount of any threatened **Claim** exceeds the amount of **Mitigation Costs**; and
- c** the **Insured** agrees to enter into a properly executed deed of release with the dissatisfied customer should the **Insurer** require such deed of release.

The **Insurer's** maximum aggregate liability for the **Policy Period** under this Extension 2.14 will not exceed the **Sub-Limit** stated in Item 5 of the **Schedule**.

## 2.15 New Subsidiaries and Former Subsidiaries

- a** If during the **Policy Period**, the **Policyholder** or any **Subsidiary** acquires or creates a **New Subsidiary**, then this **Policy** automatically extends cover for the **New Subsidiary** from the date of such acquisition or creation without notice to the **Insurer** or additional premium being payable, provided that:
  - i** for an acquired **New Subsidiary**, the revenue off the **New Subsidiary** in the 12 months prior to the acquisition does not exceed Thirty percent (30%) of the consolidated revenue of the **Policyholder** and any **Subsidiary**; and
  - ii** the **New Subsidiary** undertakes the same **Professional Services** covered under this **Policy**; and
  - iii** the **New Subsidiary** is not incorporated in, does not have assets in, does not generate fees or revenue from and does not perform **Professional Services** in, the United States of America or Canada or any of their territories or protectorates; and
  - iv** the **New Subsidiary** is not a **Financial Institution**; and
  - v** the **New Subsidiary** has not had any pending, paid or incurred professional indemnity claims against it in the five (5) years prior to the date of its acquisition.
- b** Any **New Subsidiary** not automatically extended cover under subparagraph 2.15(a), will automatically be extended cover for a period of sixty (60) days (within the **Policy**

**Period**) from the date of such acquisition or creation without notice to the **Insurer** or additional premium being payable. Subject to **Consent**, any amendments to the **Conditions** and the payment of any additional premium as the **Insurer** may reasonably require, such **New Subsidiary** will be extended cover for the remainder of the **Policy Period**. Failing **Consent** or payment of additional premium required by the **Insurer**, cover for the **New Subsidiary** will automatically terminate at the expiry of the said sixty (60) day period or the **Expiry Date**, whichever is the earlier.

- c** The cover provided for any acquired or created **New Subsidiary** pursuant to subparagraphs 2.15(a) or (b) will only be in respect of **Acts** occurring or alleged to have occurred, after the date of such acquisition or creation.
- d** If the **Insured** sells or dissolves any **Subsidiary** or **New Subsidiary** during the **Policy Period**, this **Policy** will continue to provide cover for that **Subsidiary** or **New Subsidiary** until the end of the **Policy Period**, but only in respect of **Acts** occurring or alleged to have occurred, prior to the date of such sale or dissolution.

## 2.16 Reduction of Retention

Notwithstanding General Condition 6.9 Retention, where the **Retention** for this **Policy** is \$25,000 or less, the **Insurer** will reduce the **Retention** by fifty percent (50%) if:

- a** the **Insured** is able to settle or dispose of any **Claim** in accordance with the **Conditions**; and
- b** the **Insurer Consents** to the settlement or disposal of the **Claim**; and
- c** no party involved in the **Claim** (including but not limited to any third party, the **Insured** or the **Insurer**) retains a lawyer to act on their behalf.

## 2.17 Reinstatement of Limit

If the **Limit** has been entirely exhausted due to payment under this **Policy** during the **Policy Period**, the **Insurer** will provide two reinstatements of an amount equal to the **Limit** during the **Policy Period** (hereafter referred to as the 'Reinstated Limit') without any additional premium being charged by the **Insurer**, provided that such Reinstated Limit shall be subject to the following provisions:

- a in the event that the **Insured** has additional coverage in Retention of this **Policy** then the Reinstated Limit shall only operate when such coverage is completely exhausted; and
- b the Reinstated Limit shall not apply to any **Claim** or **Investigation** in respect of which a payment has already been made under the **Policy** or to any **Claim** or **Investigation** which arises out of or is based upon substantially the same act or omission as a prior claim.

## 2.18 Replacement Costs for Loss of Documents

The **Insurer** shall pay to or on behalf of any **Insured** the reasonable costs and expenses incurred by the **Insured** with **Consent** for replacing or restoring any **Documents** in respect of any **Loss of Documents** as a direct result of the performance of **Professional Services**, provided that the costs incurred in replacing or restoring any **Documents** destroyed, damaged or lost is not due to any:

- a wear and tear or gradual deterioration; or
- b computer virus, spyware, malware or other electronic attack; or
- c act, error or omission by any person who was not an **Employee** or a director, officer, partner or principal of the **Insured Entity** at the time the destruction, damage or loss of such **Documents** is first **Discovered**.

The **Insurer's** maximum aggregate liability for the **Policy Period** under this Extension 2.18 will not exceed the **Sub-Limit** stated in Item 6 of the **Schedule** and no **Retention** will apply under this Extension 2.18.

## 2.19 Reputation Protection Costs

The **Insurer** shall pay to or on behalf of any **Insured** the reasonable costs and expenses which the **Insured** incurs with **Consent** to engage an expert public relations consultant in the event of a **Reputational Crisis** which arises as the result of **Professional Services** performed by the **Insured** and which has or could reasonably lead to a **Claim** being made or an **Investigation** being commenced, against the **Insured**.

The **Insurer's** maximum aggregate liability for the **Policy Period** under this Extension 2.19 will not exceed the **Sub-Limit** stated in Item 5 of the **Schedule**.

## 2.20 Self-Managed Superannuation Fund Auditing Standard

The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** that the **Insured** incurs in respect of a **Claim** for any civil liability arising from any failure of the **Insured** to conduct an audit in accordance with the auditing standards established under the Corporations Act 2001 (Cth), Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations 1994 (as amended from time to time, including as most recently as prescribed by the Superannuation Industry (Supervision) Amendment Regulation 2012 (No 6)) including any amendment, superseding, substitution, replacement or re-enactment of such acts and regulations, provided that **Insurers** shall not be liable to indemnify the **Insured** for any **Claim** that arises directly or indirectly from or in connection with:

- a any dishonest, fraudulent, reckless or malicious act or omission of any **Insured** or of:
  - i their predecessor(s) in business;
  - ii any **Consultant**; or
- b any wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences by any **Insured** or **Consultant**.

## 2.21 Spouses, Estates and Representatives

The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** that the **Insured** incurs in respect of a **Claim** bought against:

- a the lawful spouse, domestic partner or family member of an **Insured Person**; or
- b the heir, legal representative, executor or administrator of any **Insured Person** in the event of such **Insured Person's** death, incapacity or bankruptcy,

as if the **Claim** had been bought against the **Insured Person**.

There is no cover under this Extension 2.21 for any actual or alleged act, error or omission of any person listed in paragraphs 2.21(a) and (b) above.

## 2.22 Transaction Run Off Cover

In the event of a **Transaction** during the **Policy Period**:

- a the **Policyholder** must give written notice of that **Transaction** to the **Insurer** within thirty (30) days of the effective date of that **Transaction**; and
- b the cover provided under this **Policy** will continue in full force and effect until the **Expiry Date** but only in respect of **Acts** occurring prior to the effective date of the **Transaction**; and
- c the **Policyholder** may purchase an **Extended Reporting Period** of up to eighty-four (84) months, commencing on the effective date of the **Transaction**, provided that the **Policyholder** gives written notice to the **Insurer** of its intention to purchase an **Extended Reporting Period** no later than thirty (30) days after the effective date of the **Transaction**.

The **Insurer** at their discretion may offer this **Extended Reporting Period** subject to amendments to the **Conditions** and payment of any unearned **Premium** or any additional premium as the **Insurer** will require within the timeframe specified by the **Insurer**. If the **Extended Reporting Period** is purchased, an **Insured** may provide notification to the **Insurer**, after the **Transaction** and during the **Extended Reporting Period**, of a **Claim** or **Investigation**, but only in respect of **Claims** or **Investigations** arising from **Acts** occurring prior to the effective date of that **Transaction**.

## 2.23 Vicarious Liability for Consultants

The **Insurer** shall pay to or on behalf of any **Insured**:

- a the **Defence Costs** and **Damages** which such **Insured** incurs resulting from any **Claim** for any civil liability; and
- b **Investigation Costs** in respect of any **Investigation**, first commenced against the **Insured** and reported to the **Insurer** during the **Policy Period** or the **Extended Reporting Period**, if applicable,

arising from the performance of **Professional Services** by any **Consultant**, but only to the extent of the **Insured's** own liability and not the **Consultant's** liability.

## 3. OPTIONAL EXTENSIONS

The following Optional Extensions are only included if shown as 'Included' in the **Schedule**. The Optional Extensions form part of the **Policy** and are subject to its **Conditions**. None of the Optional Extensions increase the **Limit**.

### 3.1 Fidelity Cover

Notwithstanding Exclusion 4.9 Fraud, Dishonesty and Intentional Acts, the **Insurer** shall pay to or on behalf of the **Insured** any **Crime Loss** first discovered during the **Policy Period** and notified to the **Insurer** within thirty (30) days following such discovery and within the **Policy Period** provided that:

- a the **Insurer** shall reduce any payment under this Extension 3.1 by any amount owing or payable to any **Employee**, director, officer, partner or principal; and
- b the **Insured** shall at its own cost, prove to the satisfaction of the **Insurer** it is entitled to an indemnity under this Optional Extensions; and
- c all losses in any way connected with any dishonest, fraudulent or malicious acts committed by an **Employee**, director, officer, partner or principal with be deemed to be one loss; and
- d no cover shall be provided to any **Insured** committing, or condoning, expressly or implicitly any fraudulent, dishonest or malicious act in consequence of which the **Crime Loss** occurred.

The **Insurer's** maximum aggregate liability for the **Policy Period** under this Extension 3.1 will not exceed the **Sub-Limit** of \$100,000.

### 3.2 Director, Officer, Partner or Principal's Previous Business

The **Insurer** shall pay to or on behalf of any **Insured** the **Defence Costs** and **Damages** resulting from any **Claim** for any civil liability:

- a first made against any person who is a director, officer, partner or principal of the **Insured**, and reported to the **Insurer** during the **Policy Period**; and
- b arising from that director, officer, partner or principal's performance of professional services (that are the same as the **Professional**

**Services**) prior to them joining the **Insured**, provided that the director, officer, partner or principal is not covered by any other professional indemnity insurance or other insurance policy or source of indemnity.

## 4. EXCLUSIONS

The **Insurer** shall not be liable to make any payment under this **Policy** arising out of, based upon, or attributable to, or in any way directly or indirectly connected with:

### 4.1 Asbestos, Mould and Silicon

- a** asbestos, asbestos fibres or derivatives of asbestos; or
- b** fungi, moulds, spores, bacteria or mycotoxins of any kind; or
- c** silicon or silica or derivatives of silicon or silica.

### 4.2 Associated Entities or Persons

any **Claim** made, or **Investigation** commenced, by or on behalf of any:

- a** **Insured**, other than a **Claim** for contribution or indemnity; or
- b** child, sibling, spouse, partner or parent of any **Insured** or parent, child or sibling of a spouse or partner of any **Insured**; or
- c** entity in which any **Insured** has a financial interest, controls or manages; or
- d** entity which owns, controls or manages the **Insured Entity**.

### 4.3 Assumed and Financial Liabilities

- a** any liability which the **Insured** has assumed under any contract or agreement, unless such liability would have attached in the absence of such contract or agreement; or
- b** any express fitness for purpose term in any contract or agreement; or
- c** the administration, bankruptcy, insolvency, liquidation or receivership of the **Insured**; or
- d** any debt or trading loss or guarantee for a debt incurred or given by the **Insured**; or
- e** any delay in performing, failing to perform or failing to complete any **Professional Services**,

unless such delay or failure arises from a breach of professional duty by an **Insured**; or

- f** any refund of professional fees; or
- g** any breach of a lending covenant committed by the **Insured**.

### 4.4 Bodily Injury and Property Damage

- a** any death, bodily or mental injury, sickness or disease, emotional distress or mental anguish, of any natural person; or
- b** any damage to, or destruction of, any property, including loss of use of any property, provided that this Exclusion 4.4 will not apply to:
  - i** any event described in subparagraphs 4.4 (a) or (b) above that results directly from the performance of or failure to perform **Professional Services**;
  - ii** any actual or alleged mental illness, emotional distress or injury to feelings resulting directly from **Defamation**; or
  - iii** with respect to property damage, Extension 2.18 Replacement Costs for Loss of Documents.

### 4.5 Conflict of Interest

- a** any conflict of interest or failure to disclose any conflict of interest; or
- b** any failure to disclose any commissions, fees or other remuneration or benefits received or that may be received or payable; or
- c** any referral by the **Insured** to a financial planner, mortgage broker or provider of financial services.

### 4.6 Employer's Liability

- a** any death, bodily or mental injury, sickness or disease, emotional distress or mental anguish of any **Employee** or any **Consultant**; or
- b** any damage to, destruction of or loss of use of any property of any **Employee** or any **Consultant**.

#### 4.7 Financial Services

any financial planning, financial advice or investment advice provided by any **Insured** or any **Consultant**, including but not limited to any advice given, services performed, or recommendation made, as to the valuation, tax implications or performance of any investment.

#### 4.8 Fines and Penalties

- a any fines or penalties; or
- b any aggravated, exemplary, multiple, punitive or other non-compensatory damages; or
- c any taxes or sums payable in relation to taxes.

#### 4.9 Fraud, Dishonesty and Intentional Acts

any fraudulent, dishonest or reckless conduct including intentional breach of any law or regulation by the **Insured** or any **Consultant** provided that this Exclusion will only apply if such **Insured** or **Consultant** admits in writing to such conduct or if it is established to have occurred by a judgement or other final non-appealable adjudication of any court, tribunal or arbitrator. In the event the conduct is admitted or established to have occurred as set out above, the **Insured** shall reimburse the **Insurer** for any sums paid in connection with the **Claim** or **Investigation** arising from the fraudulent, dishonest or reckless conduct.

#### 4.10 Infrastructure

- a any mechanical failure; or
- b any electrical failure, including any electrical power interruption, surge, brown out or black out; or
- c any telecommunications or satellite systems failure,

provided that this Exclusion will not apply if such failure arises solely from an act, error or omission committed in the performance of **Professional Services**.

#### 4.11 Licencing Investigations

any investigation, examination, inquiry or prosecution relating to the **Insured** not being

or failing to be properly licenced, registered or accredited to provide **Professional Services** as required by any law or regulation including industry codes or practice, or to maintain such status.

#### 4.12 Maintaining Insurance

any act, error or omission on the part of any **Insured** in connection with the arrangement, effecting of or maintenance of any, or any adequate insurance.

#### 4.13 Management Liability

any actual or alleged breach by the **Insured** of a duty owed while acting in the capacity of a director, officer, secretary, or trustee.

#### 4.14 Money and Securities

any loss of **Money** or **Securities**. This exclusion will not apply to Optional Extension 3.1 Fidelity Cover if shown as 'Included' in the **Schedule**.

#### 4.15 Pollution

any **Pollution** or the breach of any environmental law.

#### 4.16 Prior Matters

- a any oral or written demand for compensation or any **Investigation**, first made, commenced, threatened, intimated or involving the **Insured** prior to the **Inception Date**; or
- b any facts or circumstances which the **Insured** was aware of, or ought reasonably to have been aware of, prior to the **Inception Date**; or
- c any facts or circumstances that may reasonably be expected to give rise to a **Claim** or **Investigation** which have been reported or can or could be reported under any **Prior Policy** or any other insurance policy or indemnity entered into before the **Inception Date**; or
- d any facts or circumstances that may reasonably be expected to give rise to a **Claim** or **Investigation** which have been disclosed to any insurer in any proposal for any insurance before the **Inception Date** or to the **Insurer** in the **Proposal**; or

- e any facts or circumstances which ought to have been disclosed to the **Insurer** in the **Proposal**.

#### 4.17 Privacy Breach

- a any notification to any client, third party, **Regulator**, or any other entity or person of any actual, alleged or suspected breach of privacy; or
- b any formal administrative, regulatory, official or internal investigation, examination or inquiry in relation to any actual, alleged or suspected breach of privacy; or
- c costs or expenses of any kind incurred by or on behalf of the **Insured** to rectify or mitigate any actual, alleged or suspected breach of privacy.

provided that this Exclusion will not apply if such failure arises solely from an unintentional act, error or omission committed in the performance of **Professional Services**.

#### 4.18 Products

any goods manufactured, constructed, altered, repaired, treated, sold, recalled, fabricated, distributed, installed or maintained, modified, or supplied by or on behalf of any **Insured** or any **Consultant**.

#### 4.19 Property Valuation

any property valuations.

#### 4.20 Radioactivity

any ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### 4.21 Real Property and Transport

- a any ownership, occupation, management, control, possession or use by or on behalf of any **Insured** or any **Consultant** of any real or other property (whether mobile or immobile); or
- b any ownership, maintenance, operation,

possession, use, loading or unloading by or on behalf of any **Insured** or any **Consultant** of any aircraft, watercraft, mechanically propelled vehicle or trailer.

#### 4.22 Retroactive Date

any **Professional Services** performed or alleged to have been performed prior to the **Retroactive Date**.

#### 4.23 Tax Schemes

any tax product, tax scheme or tax arrangement, including but not limited to any advice given by the **Insured** to any client on how to minimise their taxation obligations by investing in any such tax product, tax scheme or tax arrangement:

- a alleged to be designed to avoid taxation; or
- b to which Part IVA of the Income Tax Assessment Act 1936 (Cth) (or its equivalent or replacement) applies, unless the Australian Taxation Office has issued a compliancy determination or product ruling prior to any promotion of, or investment in, the scheme or arrangement.

#### 4.24 Trade Practices

any breach of any law anywhere in the world regulating anti-trust, monopolisation, price fixing, price discrimination, predatory pricing, restraint of trade, unfair competition or similar anti-competitive behaviour.

#### 4.25 Uninsurable Amounts

any amounts uninsurable under law.

#### 4.26 USA/Canada Territory and Jurisdiction

- a any **Claims** and **Investigations** bought, commenced, pending, or maintained within the territorial limits of the United States of America or Canada or any of their territories or protectorates; or
- b any **Claims** arising from or attributable to the enforcement of any judgement, order or award obtained in the United States of America or Canada or any of their territories or protectorates.

#### 4.27 War and Terrorism

- a any war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b any actual or threatened act of terrorism or any action taken to, or in an attempt to, control, prevent or suppress any act of terrorism.

## 5. CLAIMS CONDITIONS

### 5.1 Notification

- a The **Insured** shall give written notification of any **Claim, Investigation** or other matter claimable under this **Policy** to the **Insurer** as soon as it becomes aware of such **Claim** or **Investigation** during the **Policy Period** or **Extended Reporting Period**, if applicable.
- b All notices must be sent either by email or mail to the details specified on the **Schedule**.
- c Any **Claim** or **Investigation** must relate to **Acts** occurring or alleged to have occurred, prior to the **Expiry Date**.

### 5.2 Content of Notification

All notifications under Clause 5.1 should include but not limited to:

- a a description of the **Claim** or **Investigation**, including the manner in which the **Insured** first became aware of the **Claim** or **Investigation**; and
- b the details of any persons or entities involved; and
- c a copy of any written demand or assertion or any writ or notice.

The **Insured** must provide the **Insurer** with such further information and, or documentation as it may reasonably require.

### 5.3 Defence and Settlement of Claims or Investigations

- a It is the duty of the **Insured** to:

- i not do anything to prejudice the position of the **Insurer** or its ability to investigate, settle, defend, or appeal any **Claim** or **Investigation**;
  - ii keep the **Insurer** fully informed of all matters relating to or concerning any **Claim** or **Investigation**;
  - iii at its own cost, provide the **Insurer** with such information and assistance relating to any **Claim** or **Investigation** as the **Insurer** may reasonably require and with copies of all relevant correspondence and documents and to authorise other persons to provide the **Insurer** with such information, correspondence and documents, including the personal data of the **Insured**;
  - iv not, without **Consent**, admit or assume any liability for, offer to settle or settle, any **Claim** or incur any **Defence Costs** or **Investigation Costs** or other costs and expenses or consent to any judgment or award in respect of any **Claim**;
  - v take all necessary steps to defend any **Claim** or respond to any **Investigation** and to assert all appropriate defences, counter-claims and any cross-claims for contribution, indemnity, damages and costs and expenses;
  - vi allow the **Insurer** to associate with the **Insured** in the investigation, settlement, defence or appeal of any **Claim** or **Investigation**.
- b The **Insured** shall have the duty to defend a **Claim** or respond to an **Investigation**, however the **Insurer** shall have the right but not the duty to take over the investigation, settlement or defence of any **Claim** or **Investigation**, in which case, the **Insurer** will have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.
  - c The **Insured** may only appoint a lawyer to act on their behalf in relation to any **Claim** or **Investigation** with **Consent**.
  - d At the request of the **Insured**, the **Insurer** shall provide to the **Insured** a claims consultation in relation to any **Claim** or **Investigation** to outline mutually agreeable claims communications and, service standards.

- e The **Insurer** accepts that it may be necessary for **Insureds**, at their own cost, to retain separate legal representation if there is a conflict of interest between them.

#### 5.4 Claims Settlement Disputes

- a Where there is a dispute between the **Insurer** and the **Insured** as to whether a **Claim** or **Investigation** should be settled or defended, the **Insurer** will refer the matter for determination by a **Senior Counsel**. The **Insured** shall not be required to contest any legal proceedings against the **Insured** unless the **Senior Counsel** advises the legal proceedings can be contested with a reasonable prospect of success. The costs of such advice will be borne by the **Insurer**.
- b If the **Insured** does not agree with the **Insurer's** decision to settle or compromise any **Claim** or **Investigation**, the **Insured** may elect to contest or litigate the **Claim** or **Investigation**, however the **Insurer's** liability in respect of any such **Claim** or **Investigation** will be limited to the amount that the **Insurer** recommends the **Claim** or **Investigation** could have been settled for plus **Defence Costs** and **Investigation Costs** incurred with the **Insurer's Consent** up to the date the **Insured** advises the **Insurer** of their election to contest or litigate a **Claim** or **Investigation**.

#### 5.5 Allocation

In the event the **Insured** is a party to any **Claim** or **Investigation** that involves covered and non-covered matters or covered and non-covered parties, the **Insured** and the **Insurer** will use their best efforts to agree upon a fair and proper allocation of amounts insured under this **Policy** which relate solely to what is covered under this **Policy**, taking into account the relative legal and financial exposures and the relative benefits attributable to covered matters or parties and uncovered matters or parties. In the event that an agreement cannot be reached, **Senior Counsel** will determine, as an expert but not an arbitrator, a fair and proper allocation. Until **Senior Counsel** has made such a determination, the **Insurer** may, in its absolute discretion, pay such amounts under this **Policy** as it considers appropriate. The costs of **Senior Counsel** will be deemed **Defence Costs** or **Investigation Costs**.

#### 5.6 Related Claims and Investigations

- a Any **Claim(s)** or **Investigation(s)** arising out of, based upon, attributable to, in connection with or in any way involving:
  - i the same or substantially the same acts, errors or omissions or a series of related acts, errors or omissions;
  - ii the same or substantially the same source or originating cause;
  - iii the same situation, transaction or event,

will be deemed to be a single **Claim** or **Investigation** for the purposes of this **Policy** and a single **Retention** will apply to each such **Claim** or **Investigation**.

- b All such **Claims** or **Investigations** shall be considered:
  - i made at the same time as that first notified **Claim** or **Investigation**;
  - ii reported at the same time as that first reported **Claim** or **Investigation**.

### 6. GENERAL CONDITIONS

#### 6.1 Co-Insurance

The liability of each **Insurer** is several and not joint and is limited to its Proportional Share of the **Limit** as stated at Item 3A of the **Schedule**.

**Delta** is the lead insurer and is authorised to deal with all matters under this **Policy** on behalf of all **Co-Insurers**. **Delta** will lead the investigation, settlement, defence or appeal of any **Claim** or **Investigation**. No settlement or compromise will be made, and no liability will be admitted, by **Delta** for the **Co-Insurers** own share without the prior agreement of the **Co-Insurers**.

#### 6.2 Governing Law

This **Policy** is governed by and will be construed in accordance with the law of the Commonwealth of Australia and the State or Territory in which the **Policy** was issued by the **Insurer**. The **Insured** and **Insurer** agree the courts of the Australian State or Territory where the **Policy** was issued will have exclusive jurisdiction in relation to all matters arising under or in connection with this **Policy**.

### 6.3 Severability and Non-Imputation

- a Where the **Policy** insures more than one party, the **Proposal** is construed as a separate application by each **Insured**.
- b For the purposes of determining the availability of cover under this **Policy**:
  - i any failure to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or any misrepresentation by an **Insured** will not be imputed to any other **Insured** provided always that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such failure or misrepresentation;
  - ii the conduct of an **Insured** will not be imputed to any other **Insured** provided always that cover is only provided to an **Insured** who is innocent of and has no prior knowledge of such conduct;
  - iii with respect to an **Insured** who is not a natural person, the statements or representations made, acts or omissions committed by, and the knowledge possessed by a director, officer, partner or principal of such **Insured** will be imputed to such **Insured**.

### 6.4 Limit of Liability and Sub-Limits

- a The maximum amount payable by the **Insurer** under this **Policy** or any amount payable pursuant to an **Endorsement**, is the aggregate of the **Limit** regardless of the number of **Claims**, **Investigations** or **Insureds** who make **Claims**.
- b **Defence Costs** are in addition to, and not part of, the **Limit**.
- c The **Insurer's** liability for any cover which has a **Sub-Limit** will not exceed the applicable **Sub-Limit**.
- d Any **Sub-Limit** or other amounts (excluding **Defence Costs**) insured by the **Policy** are part of and not in addition to the **Limit**.
- e If the **Limit** is exhausted by **Insurer** payments, all obligations of the **Insurer** under this **Policy** will be completely fulfilled and the **Insurer** will have no further obligations under this **Policy** of any kind.
- f The **Extended Reporting Period** will neither increase nor reinstate any **Limit**.

- g The inclusion of more than one **Insured** under this **Policy** does not increase the maximum amount payable under this **Policy** by the **Insurer**.

### 6.5 Other Insurance

If an **Insured** is or would (but for the existence of this **Policy**) be entitled to cover under any other insurance policy in respect of a **Claim**, **Investigation** or other amount insured by this **Policy**, then to the extent permitted by the Insurance Contracts Act 1984 (Cth), the **Insurer** will not be liable to make any payments other than in excess of any amount that is or would (but for the existence of this **Policy**) have been payable under such other insurance policy.

If the other insurance is provided by the **Insurer** or any other member, company, associate or affiliate of the **Insurer**, in respect of a **Claim**, **Investigation** or other amount insured by this **Policy**, the **Limit** under this **Policy** in respect of that a **Claim**, **Investigation** or other amount insured shall be reduced by any amount paid by the **Insurer** (or member company, associate or affiliate of the **Insurer**) under such other insurance in respect of the same **Claim**, **Investigation** or amount.

### 6.6 Policy Interpretation

The descriptions in the headings and any subheading of this **Policy** (including any titles given to any **Endorsement** attached hereto) are inserted solely for convenience and do not constitute any part of the **Conditions**.

The **Policy**, the **Schedule** and any **Endorsements** are to be read together as one agreement between the **Insured** and the **Insurer**. The **Conditions** can only be changed by a written **Endorsement**.

### 6.7 Policy Termination

- a The **Policyholder** may terminate this **Policy** at any time by giving written notice to the **Insurer**. Termination will become effective upon receipt of such notice by the **Insurer**. If the **Policy** is terminated, the **Insurer** will return the applicable **Pro-Rata Premium** to the **Policyholder**;
- b The **Insurer** may not terminate this **Policy** for any reason, except for non-payment of the

**Premium** as required under Clause 6.8. In the event of such non-payment, the **Insurer** may terminate this **Policy** in accordance with the terms of the *Insurance Contracts Act 1984 (Cth)*.

- c The **Premium** will be deemed fully earned and no refund will be due to the **Policyholder**:
  - i if the **Insurer** has paid, reserved for or been notified of a **Claim** or **Investigation**; or
  - ii if a **Transaction** occurs during the **Policy Period**.

## 6.8 Premium Payment

The **Premium** is to be paid by the **Policyholder** and must be received in full by the **Insurer** no later than ninety (90) days after the **Inception Date**. If the **Policyholder** fails to make such payment, the **Insurer** may terminate this **Policy** in accordance with Clause 6.7(b).

## 6.9 Retention

- a The **Insurer** shall only be liable for the **Defence Costs, Damages, Investigation Costs** and any other amounts insured under any Extensions, Optional Extensions or **Endorsements** which exceed the applicable **Retention** specified in the **Schedule**, or as otherwise set out in this **Policy**. The **Retention** will be borne by the **Insured** and remain uninsured.
- b A single **Retention** will apply to all **Defence Costs, Damages, Investigation Costs** and any other amounts insured under any Extensions, Optional Extensions or **Endorsements** which arise out of, are based upon or are attributable to the same acts, errors or omissions; a series of related acts, errors or omissions; the same or substantially the same source or originating cause; the same situation, transaction or event.

## 6.10 Subrogation and Recoveries

- a If the **Insurer** makes, or agrees to make, any payment under this **Policy**, the **Insurer** will be subrogated to all rights of recovery of the **Insured**. The **Insured** will co-operate with, and provide all reasonable assistance to, the **Insurer** to secure such rights, including but not limited to the execution and delivery of documents and papers.

- b An **Insured** must not prejudice the **Insurer's** rights including its potential or actual rights of recovery against any person or entity.
- c The **Insurer** will be entitled to any **Recoveries** in priority to the **Insured**. If the **Recoveries** exceed the **Insurer's** total payment under this **Policy**, the amount by which the **Recoveries** exceed such payment will be paid to the **Insured**, less the cost to the **Insurer** of effecting such **Recoveries**.

## 6.11 Trade Sanctions

The **Insurer** shall not be deemed to provide cover nor be liable to pay any **Claim** or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such **Claim** or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction, including under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia, the United States of America or any applicable jurisdiction.

## 6.12 Territorial and Jurisdictional Limits

This **Policy** covers, subject to the **Conditions**, including but not limited to Exclusion 4.26 USA/Canada Territory and Jurisdiction:

- a civil liability incurred by the **Insured** in connection with performance of **Professional Services** anywhere in the world; and
- b **Claims** or **Investigations** made or commenced against the **Insured** anywhere in the world.

## 6.13 Confidentiality

The **Insured** shall not disclose the terms of this **Policy** or the amount of the **Premium** paid to any third party except:

- a to the extent that the **Insured** is required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or
- b that the existence of the **Policy** and the **Limit** available hereunder may be disclosed to an insurer, to a client or a prospective client, wholesale broker or placing agent where this

is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where the **Insured** is aware or ought reasonably to be aware that the person to whom disclosure is going to be made has made or is likely to make a **Claim** against the Insured; or

c with **Consent**.

## 7. DEFINITIONS

7.1 **Acts** means any:

- a **Professional Services** performed by the **Insured**; or
- b other conduct specified in any Extension or **Endorsement**.

7.2 **Breach of Warranties and Conditions** means an actual or alleged breach of warranty or condition by the **Insured** as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law and/ or any legislation of any State or Territory of the Commonwealth of Australia, which results from the **Insured's** performance of **Professional Services**.

7.3 **Claim** means any:

- a oral or written demand for compensation;
- b civil or administrative proceeding, arbitration or any other adjudicative proceeding, including any cross-claim or counter-claim seeking compensation;

first made or commenced by a third party against the **Insured** and reported to the **Insurer** during the **Policy Period** or the **Extended Reporting Period**, if applicable.

**Claim** will not include any **Investigation**.

7.4 **Co-Insurers** means the companies, syndicates, underwriting agencies and other insurers listed in Item 10 of the **Schedule**.

7.5 **Conditions** means the terms, conditions and exclusions of this **Policy**.

7.6 **Consent** means the **Insurer's** prior written consent, which will not be unreasonably withheld.

7.7 **Consultant** means an agent, consultant, sub-contractor, sub-agent or any other person

performing **Professional Services** for or on behalf of the **Insured Entity** pursuant to a written contract with the **Insured Entity**. **Consultant** does not include any **Employee**.

7.8 **Consumer Protection Legislation** means an actual or alleged breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Fair Trading legislation of any State or Territory of the Commonwealth of Australia, Corporations Act 2001 (Cth) and National Consumer Credit Protection Act 2009 (Cth) including any amendment, superseding, substitution, replacement or re-enactment of such acts and regulations.

7.9 **Crime Loss** means direct loss of **Money** or **Securities** owned by the **Insured**, or for which the **Insured** is legally liable, where such loss results solely from any dishonest, fraudulent or malicious acts committed by an **Employee**, director, officer, partner or principal of the **Insured**.

**Crime Loss** does not include:

- a any indirect and consequential loss including but not limited to investigation or legal costs, liability to third parties, damages, interest or any loss that is not the direct loss of **Money** or **Securities**; or
- b loss resulting from cheques that are not countersigned; or
- c loss resulting from the transfer of funds not authorized by two or more **Employees**, directors, officers, partners or principals.

7.10 **Damages** means any amount that the **Insured** is legally liable to pay as monetary compensation or claimants costs, pursuant to a judgement or award rendered against the **Insured** or settlements entered into with **Consent**.

**Damages** will not include any employment-related benefits or entitlements, including unpaid superannuation guarantee charge or pension amounts.

7.11 **Defamation** means any unintentional libel, slander, defamation or injurious falsehood committed or alleged to have been committed by the **Insured** in the performance of **Professional Services**.

7.12 **Defence Costs** means reasonable costs and expenses incurred by the **Insurer**, or by the

**Insured** with **Consent**, solely for the benefit of the **Insured** in investigating, settling, defending or appealing any **Claim**.

**Defence Costs** will not include the **Insured's** salaries, wages, fees, allowances, travel and accommodation expenses or any internal or overhead costs and expenses incurred by the **Insured**.

**7.13 Delta** means Delta Insurance Australia Pty Ltd writing on behalf of the underwriter(s) named in the **Schedule**.

**7.14 Discovered** means the time when the **Insured Entity** or any of its directors, officers, partners or principals, was aware of, or ought reasonably to have been aware of, any act or omission which could give rise to a **Loss of Documents** even if the exact amount or details of the **Loss of Documents** was not known at such time. Awareness of such act or acts will constitute knowledge possessed or discovery made by every **Insured Entity**.

**7.15 Document** means any documents used in connection with, or related to, the performance of **Professional Services** including deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms, whether written, printed or reproduced including computer records and electronic data.

**Document** will not include cash, a bill of exchange, letter of credit, money order, negotiable instrument or any other document of intrinsic monetary value.

**7.16 Employee** means any person who in the past, present or future is or was under a contract of service or apprenticeship with the **Insured**.

**Employee** does not include any director, officer, partner, or principal of the **Insured** or any **Consultant**.

**7.17 Endorsement** means an additional contractual term of this **Policy** agreed in writing between the **Insurer** and the **Policyholder** and incorporated by reference in the **Schedule**.

**7.18 Expiry Date** means the date stated in Item 2B of the **Schedule**.

**7.19 Extended Reporting Period** means the period of time specified in Extension 2.8 (Extended Reporting Period) and in relation to **Transactions**, the period specified Extension 2.22 (Transaction

Run-Off Cover), in which the **Insured** can report to the **Insurer** of any **Claim** or **Investigation** first made or commenced during the **Policy Period** or such specified period of time, provided such **Claim** or **Investigation** arises from **Acts** occurring or alleged to have occurred, prior to the **Expiry Date** or the effective date of the **Transaction**, whichever is applicable.

**7.20 Financial Institution** means any entity which has at any time held or currently holds an Australian Financial Services License (AFSL) of any type or the equivalent in any foreign jurisdiction. Financial Institution will also include any person or entity carrying on business as an authorised representative of any AFSL holder or any person or entity that has been granted an exemption from holding an AFSL.

**7.21 Inception Date** means the date stated in Item 2A of the **Schedule**.

**7.22 Insured** means any **Insured Entity** and **Insured Persons**.

**7.23 Insured Entity** means the:

- a** the **Policyholder**; and
- b** any **Subsidiary**; and
- c** any **New Subsidiary**.

**7.24 Insured Person** means:

- a** any past, present or future director, officer, partner or principal of an **Insured Entity**; and
- b** any **Employee**,

but only in relation to the **Professional Services** performed for or on behalf of an **Insured Entity** while they are director, officer, partner, principal or **Employee** of an **Insured Entity**.

**7.25 Insurer** means **Delta** and any **Co-Insurers**

**7.26 Intellectual Property Infringement** means unintentional infringement by the **Insured** of any **Intellectual Property Right**, provided the actual or alleged unintentional infringement by the **Insured** is committed in the performance of **Professional Services**.

**7.27 Intellectual Property Right** means all current and future intellectual property rights in whatever media, whether registered or unregistered and whether or not capable of registration, including but not limited to all copyright, patents, trademarks, trade

names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights), including but not limited to trade secrets, know-how, formulae, methods, routines and other proprietary technology.

**7.28 Investigation** means any formal administrative, regulatory or official investigation, examination, inquiry or hearing:

- a** related to the **Insured's** performance of **Professional Services**; and
- b** conducted by a **Regulator**; and
- c** which an **Insured** is legally required to attend or legally required to provide a response to; and
- d** the findings of which could lead to a **Claim** being made against the **Insured**.

An **Investigation** will be deemed to be 'first made' against the **Insured** when the **Insured** is first notified in writing that they are required to attend an **Investigation** or to provide a response to an **Investigation**.

**Investigation** does not include any routine supervision, inspection, compliance or similar reviews conducted by any **Regulator** or any investigation of industry-wide violations rather than a specific investigation into the affairs of an **Insured**.

**Investigation** will not include any **Claim**.

**7.29 Investigation Costs** means the reasonable costs and expenses incurred with **Consent** by or on half on the **Insured**, in preparing for and attending, or producing documents and information to, an **Investigation**.

**Investigation Costs** will not include the **Insured's** salaries, wages, fees, allowances or travel and accommodation expenses or any internal or overhead costs and expenses incurred by the **Insured**.

**7.30 Limit** means the amount stated at Item 3A of the **Schedule**.

**7.31 Loss of Documents** means the destruction, damage to, loss or erasure of **Documents** while in the custody of the **Insured** and for which such **Insured** is legally liable or while in the custody of any person to whom such **Insured** has entrusted

them, or anywhere in transit; provided that such destruction, damage to, loss or erasure is first **Discovered** by the **Insured** during the **Policy Period**, or the **Extended Reporting Period**, if applicable.

**7.32 Mitigation Costs** means:

- a** reimbursement of fees paid; or
- b** waiver of fees outstanding,

for **Professional Services** rendered by the **Insured**.

**Mitigation Costs** will not include:

- a** the **Insured's** revenue, profits or loss of opportunity; or
- b** amounts paid by the **Insured** solely for the purpose of reducing or removing reputational risk to the business; or
- c** **Damages**, compensation or other payments made, or consideration given, to customers, clients or potential claimants; or
- d** any amount once a **Claim** is made.

**7.33 Money** means bank notes and currency, crypto and digital currency or asset, shares and bonds, cheques of any kind, precious metals and gems, coupons, stamps, postal orders and money orders.

**7.34 New Subsidiary** means any entity created or acquired by the **Policyholder** during the **Policy Period** which the **Policyholder** directly or indirectly:

- a** controls a majority of the voting rights; or
- b** controls the right to appoint a majority of its board of directors; or
- c** holds more than half of its issued share capital.

Cover under this **Policy** for a **New Subsidiary** will only be extended in accordance with the terms of Extension 2.15 New Subsidiaries and Former Subsidiaries.

**7.35 Policy** means this policy document, the **Schedule** and any **Endorsements** to this policy.

**7.36 Policyholder** means the entity stated at Item 1A of the **Schedule**.

**7.37 Policy Period** means the period of time stated at Item 2A to 2B of the **Schedule**, unless this **Policy** is terminated in which event the **Policy Period** will expire on the effective date of such termination.

- 7.38 Pollutants** means any contaminant, irritant or other matter or substance including but not limited to oil, smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 7.39 Pollution** means:
- a** the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **Pollutant** whether in a solid, liquid, gas, odour, noise, vibration, thermal or other form at any time;
  - b** the cost of testing and monitoring for, removing, nullifying, containing, neutralising, or cleaning up of **Pollutants** or the cost of preventing the escape of **Pollutants**.
- 7.40 Premium** means the amount payable by the **Policyholder** for this **Policy**, stated at Item 11 of the **Schedule** and any additional premium required by the **Insurer**.
- 7.41 Prior Policy** means any professional liability insurance policy issued to any **Insured Entity** by the **Insurer** prior to the **Inception Date**.
- 7.42 Professional Services** means the professional services performed by the **Insured**, specified in Item 1C of the **Schedule**.
- 7.43 Proposal** means the proposal form, attachments and any other information submitted by or on behalf of the **Insured** in connection with the application for this **Policy**.
- 7.44 Pro-Rata Premium** means the greater of that part of the **Premium** calculated on a pro-rata basis or thirty-five percent (35%) of the **Premium**.
- 7.45 Recoveries** means monies recovered by the **Insurer** pursuant to their subrogation rights under the **Policy** or otherwise in connection with this **Policy**.
- 7.46 Regulator** means any government, government body, governmental or administrative agency, official trade body, self-regulatory organisation, statutory body, professional body or similar.
- 7.47 Reputational Crisis** means damage to the **Insured's** professional reputation as evidenced by media reports or other data or information available to the public which first occurs and is reported to the **Insurer** during the **Policy Period**.
- 7.48 Retention** means the amounts, if any, stated in Item 4 of the **Schedule**.
- 7.49 Retroactive Date** means the date stated at Item 7 of the **Schedule**.
- 7.50 Schedule** means the schedule attached to this **Policy**.
- 7.51 Securities** means all negotiable and non-negotiable instruments or contracts, including any note, stock, bond, debenture, share or other equity or debt security, representing either money or property, but does not include **Money**.
- 7.52 Senior Counsel** means a senior counsel to be mutually agreed or if no agreement can be reached is to be selected by the President of the Bar Association, or equivalent organisation, in the State or Territory where the **Policy** was issued.
- 7.53 Sub-Limit** means the maximum liability of the **Insurer** under this **Policy** for any cover which has a **Sub-Limit**, as stated in Item 5 the **Schedule** or in the **Policy** or any **Endorsement**.
- 7.54 Subsidiary** means any entity which the **Policyholder** at the **Inception Date**, directly or indirectly:
- a** controls a majority of the voting rights; or
  - b** controls the right to appoint a majority of its board of directors; or
  - c** holds more than half of its issued share capital.
- 7.55 Transaction** means any of the following events:
- a** the **Policyholder** merges with or consolidates into any other entity; or
  - b** the **Policyholder** becomes a subsidiary of another entity or becomes controlled by another entity; or
  - c** the **Policyholder** sells all or more than fifty percent (50%) of its assets to any person or persons acting in concert; or
  - d** a trustee, administrator, receiver or liquidator, including any provisional liquidator, is appointed to the **Policyholder**.



**Embrace  
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**Delta Insurance Australia**

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**Delta Insurance Australia Pty Ltd**

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