

ATE Insurance Policy Wording

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Definitions

Adverse Costs Order

(a) means an order for costs which is made against the **Insured** by a **Court**.

ADR

means any recognised formal process of alternative dispute resolution in an **Australian Jurisdiction** other than a trial or final hearing, including any:

- (a) settlement conference;
- (b) mediation;
- (c) arbitration; and
- (d) expert determination.

Appeal

means an appeal brought and maintained in an **Australian Jurisdiction** against an order, judgment or award arising out of the **Dispute**.

Australian Jurisdiction

means the Australian jurisdiction in which the **Dispute** is brought, which is specified in the **Schedule**.

Balance of Premium

means the amount specified in the **Schedule** as the **Balance of Premium** including **Taxes** and which is payable by the **Insured** in the event of a **Positive Outcome** or in the event of cancellation of this **Policy** by the **Insurer**.

Claim

means any claim brought and maintained against the **Insured** by the **Other Side** as named in the **Schedule**.

Conclusion of the Dispute

means the date of full payment of an amount in accordance with the terms of settlement agreed in writing between the **Insured** and the **Other Side** a final judgment or order or a final decision which makes provision for the payment of damages and costs of the **Dispute**.

Costs

means any **Adverse Costs Order** awarded against the **Insured** and, if agreed by the **Insurer**, the **Insured's Own Disbursements**.

Cross Claim

means any claim brought against the **Insured** by a party who is not named in the **Schedule** as the **Other Side** in the **Dispute**.

Computer System

means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Court

means a court in an **Australian Jurisdiction** which is specified in the **Schedule** before which the **Dispute** is being pursued and any appellate court in an **Australian Jurisdiction** which may hear an **Appeal**, and is limited to the following:

- (a) the High Court of Australia;
- (b) the Federal Court of Australia (all registries); and
- (c) the Supreme Courts (including Courts of Appeal) of each State and Territory of Australia.

Cyber Act

means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident

means:

- i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- ii) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Deed of Indemnity

means a deed of indemnity or other instrument acceptable to the **Court** given by the **Insurer** in favour of the **Other Side** to meet the **Insured's** liability to meet a security for costs order.

Deposit Premium

means the amount specified in the **Schedule** as the **Deposit Premium** including **Taxes** that the **Insured** is required to pay to the **Insurer** at the **Policy Commencement Date**. The **Deposit Premium** is not contingent upon a **Positive Outcome** being achieved and is non-refundable.

Dispute

means the litigated proceeding specified in the **Schedule** including any step taken before a proceeding for substantive relief is commenced and which is intended to facilitate the commencement of such a proceeding and, if the **Insurer** agrees in writing, includes an **Appeal** brought by the **Other Side** where a **Positive Outcome** has been reached in the **Court** below.

GST

means goods and services tax and has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insurance Contracts Act

means the *Insurance Contracts Act 1984* (Cth).

Insured

means the person or persons specified in the **Schedule**.

Insured Liability

means the **Insured's** legal obligation to pay any or all of **Other Side's Costs**, and subject to agreement with the **Insurer**, **Own Disbursements** which the **Insurer** has agreed to indemnify, up to the **Limit of Cover** specified in the **Schedule**.

Insurer

means Hamilton Syndicate 4000 and Mosaic Syndicate 1609 at Lloyd's.

Issue Date

means the date specified in the **Schedule**.

Limit of Cover

means the maximum amount specified in the **Schedule** that the **Insurer** will be liable to pay under this **Policy**, which will be reduced by the amount of any payments to the **Other Side** by the **Insurer** pursuant to a **Deed of Indemnity** in respect of any **Adverse Costs Order**.

Other Side

means the person named in the **Schedule** from whom the **Insured** is claiming compensation or other relief in the **Dispute**.

Other Side's Costs

means Costs which the **Insured** is ordered to pay or which, with **TM Legal's Approval**, the **Insured**:

- (a) agrees; or
- (b) becomes liable by order of a **Court** in any **Australian Jurisdiction**,

to pay to the **Other Side** but, unless stated otherwise in the **Schedule**, does not include **Costs** payable by the **Insured** in respect of a **Cross Claim**.

Own Disbursements

means the **Insured's** liability for expenses (which may include the **Insured's** counsel's fees and other general disbursements but excluding **Own Solicitors' Fees**) which are reasonably and necessarily incurred in order to prosecute the **Dispute**.

Own Solicitors' Fees

means the **Representative's** fees for which the **Insured** is liable.

Policy

means this policy and the **Schedule**.

Policy Commencement Date

means the date specified in the **Schedule**.

Positive Outcome

has the meaning specified in the **Schedule**.

Premium

means the amount specified in the **Schedule** as the **Deposit Premium** and the **Balance of Premium** including **Taxes**.

Proposal Form

means the proposal form that is submitted to the **Insurer** by the **Insured** or on the **Insured's** behalf together with all material and documents submitted to the **Insurer** before the **Policy Commencement Date** in connection with the proposal form.

Quickly, Justly and Cheaply

has the same meaning as provided for in any comparable rules of any **Court** in any **Australian Jurisdiction**.

Representative

means the solicitor specified in the **Schedule** (or any other person in respect of whom **TM Legal** has given its consent pursuant to clause 4.5 of this **Policy**) who will advise the **Insured** in the **Dispute**.

Schedule

means the schedule forming part of this **Policy**.

Taxes

means all applicable taxes due and payable, including stamp duty and **GST**, at the rate in force at the date of payment of the **Deposit Premium** and **Balance of Premium**.

TM Legal

means Thomas Miller Legal or a successor legal representative appointed by the **Insurer**.

TM Legal's Approval

means approval granted in writing by **TM Legal** pursuant to clause 4.5 of this **Policy** to pursue the course of action set out in the approval and on such terms and conditions as **TM Legal** may in its absolute discretion determine.

In this **Policy**:

- (a) reference to any statute or statutory provision and orders or regulations includes a reference to that statutory provision, order or regulation as amended, re-enacted or replaced from time to time whether before or after the **Policy Commencement Date**;
- (b) words importing the singular include the plural and vice versa and references to persons include bodies corporate or unincorporated;
- (c) words importing any gender include all genders; and
- (d) if any part of any term, condition, exclusion or endorsement to this **Policy** is found to be invalid or unenforceable the remainder of the term, condition, exclusion or endorsement remains in full force and effect.

The headings in this **Policy** are for reference only and must not be considered when determining the meaning of this **Policy**.

Based on the information that the **Insured** has provided to the **Insurer** in the **Proposal Form** and in consideration of the **Insured's** promise to pay the **Premium** in the circumstances described in section 6 below, the **Insurer** agrees to provide the insurance in accordance with the terms, conditions, limitations and exclusions specified in this **Policy**.

1. The Insurance

- (a) Unless otherwise agreed in writing, the **Insurer** will indemnify the **Insured** for the **Insured Liability** in the **Dispute**, up to the **Limit of Cover** for **Other Side's Costs**.
- (b) The **Insurer** may, in its absolute discretion, agree to indemnify the **Insured** for its **Own Disbursements** but any such indemnity will not increase the **Limit of Cover** under this **Policy**.

2. Exclusions

2.1 Excluded amounts

Without limiting the rights granted to the **Insurer** under the **Insurance Contracts Act** or any other provision of this **Policy**, the **Insurer** will not, unless otherwise agreed and stated in this **Policy**, indemnify the **Insured** for:

- (a) the **Insured's Own Solicitors' Fees**;
- (b) any Costs incurred in relation to a **Cross Claim**;
- (c) **Other Side's Costs** which the **Insured** is ordered to pay or becomes liable to pay before the **Policy Commencement Date**;
- (d) any **Costs** incurred or **Adverse Costs Orders** the **Insured** may become liable to pay with respect to a claim brought by a person that is not named in the **Schedule**;
- (e) any element of **GST** where otherwise recoverable; or
- (f) the **Insured's** liability for fines or penalties.

2.2 Excluded conduct

Without limiting the rights granted to the **Insurer** under the **Insurance Contracts Act** or any other provision of this **Policy**, the **Insurer** will not, unless otherwise agreed and stated in this **Policy**, pay any claim under this **Policy** in any way related to:

- (a) the **Insured's** failure to co-operate with or to follow the advice of the **Representative**;
 - (b) any delay or default in the course of the **Dispute** on the **Insured's** part;
 - (c) any failure by the **Insured** or the **Representative** to comply with an order of a **Court** during the **Dispute**;
 - (d) any act or omission of the **Insured** or the **Representative** without **TM Legal's Approval** including:
 - (i) the **Representative** ceasing to act for the **Insured**;
 - (ii) the **Representative** varying or terminating their fee agreement with the **Insured**;
 - (iii) an application for or agreement to a consent judgment or consent orders;
 - (iv) abandonment or discontinuance of the **Dispute**;
 - (v) settlement with the **Other Side** or any other party to the **Dispute**;
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- (vi) making, accepting or rejecting an offer to settle or compromise the **Dispute** including the **Other Side's** claim for **Other Side's Costs**, interest on those costs or the costs of the assessment;
- (vii) continuing the **Dispute** after **TM Legal** has informed the **Representative** that in their view the **Insured** does not have good prospects of success; and
- (viii) commencing or maintaining an **Appeal** brought by the **Insured**;
- (ix) an admission of liability by the **Insured** for Costs arising under the rules of a **Court** in an **Australian Jurisdiction**;
- (e) any proceedings:
 - (i) commenced against or by the **Insured** prior to the **Policy Commencement Date** or relating to a matter that is not disclosed or notified to the **Insurer** prior to the **Policy Commencement Date** as being a **Claim** or a circumstance that may give rise to a **Claim**; or
 - (ii) that were in progress or pending prior to the **Policy Commencement Date** relating to a **Claim** or **Dispute** that is not specified in the **Schedule**;
- (f) any fact or circumstance of which the **Insured** became aware prior to the **Policy Commencement Date** and which the **Insured** knew or ought reasonably to have known was relevant to the conduct or outcome of the **Dispute**;
- (g) any misrepresentation to the **Insurer** during the negotiations of the **Policy** before and after the **Policy Commencement Date**;
- (h) any failure to comply with a provision of the **Policy** including a provision with respect to the payment of the **Premium**; or
- (i) any fraudulent claim under the **Policy**.

3. General Conditions

3.1 Payment of the Premium

This **Policy** will not come into force or effect unless and until:

- (a) the **Representative** has prepared (and the **Insured** has disclosed in the **Proposal Form**) a reasoned estimate of the likely Costs; and
- (b) the **Deposit Premium** has been paid in full to the **Insurer**.

3.2 Duty of disclosure

- (a) The **Insured** will notify **TM Legal** as soon as reasonably practicable if any matters come to the **Insured's** attention which would have had a material impact on the **Insurer's** decision to provide cover under this **Policy** or the terms on which the **Insurer** would have provided cover under this **Policy**.
 - (b) Before the **Insured** enters into the **Policy** with the **Insurer**, the **Insured** has a duty under the **Insurance Contracts Act** to disclose to the **Insurer** every matter that the **Insured** knows, or could reasonably be expected to know, is relevant to the **Insurer's** decision whether to accept the risk of insurance and, if so, on what terms.
 - (c) The **Insured** has the same duty to disclose those matters to the **Insurer** before it renews, extends, varies or reinstates this **Policy**.
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- (d) The duty of disclosure however does not require disclosure of a matter that diminishes the risk undertaken by **the Insurer** or that is of common knowledge or that the **Insurer** knows or, in the ordinary course of its business, ought to know, or as to which compliance with the duty is waived by the **Insurer**.
- (e) If the **Insured** fails to comply with its duty of disclosure, the **Insurer** is entitled to:
 - (i) reduce its liability under this **Policy** in respect of a **Claim**;
 - (ii) cancel the **Policy**; or
 - (iii) if the non-disclosure is fraudulent, avoid the **Policy** from its beginning.

3.3 Non-disclosure of the Policy

- (a) Other than as required by paragraph (b) or as required by law, the **Insured** must not disclose this **Policy** to any other person without **TM Legal's Approval**.
- (b) The **Insured** must supply a copy of this **Policy** to the **Representative** with instructions to become familiar with it and provide appropriate advice in order to enable the **Insured** to conform to the terms of the **Policy**.

4. Claim conditions

The **Insurer** may refuse or reduce its liability to indemnify the **Insured** if the **Insured** does not comply with the obligations set out in this section 4 of the **Policy**.

4.1 Duty to act as a prudent uninsured litigant the Insured

The **Insured** must act as a prudent uninsured litigant throughout the **Dispute**.

4.2 Conduct of the Dispute

- (a) Throughout the **Dispute**, the **Insured** must allow **TM Legal** direct access to the **Representative**.
- (b) The **Insured** must instruct the **Representative** to:
 - (i) conduct the **Dispute Quickly, Justly and Cheaply**;
 - (ii) comply with all orders made by the **Court** in the **Dispute** and to comply with the rules of the **Australian Jurisdiction** throughout the **Dispute**;
 - (iii) report to **TM Legal** in writing:
 - (A) immediately, all settlement offers made by the **Other Side**;
 - (B) as soon as reasonably practicable, all material developments in the **Dispute** including settlement discussions;
 - (iv) take all reasonable steps throughout the **Dispute** to avoid or minimise **Other Side's Costs**;
 - (v) keep the estimates of **Costs** produced pursuant to clause 3.1(a) above under regular review and keep the **Insurer** informed of any material changes;

- (vi) report to the **Insurer** at quarterly intervals following the **Policy Commencement Date** setting out the **Costs** incurred to date on the **Insured's** behalf in connection with the **Dispute**;
 - (vii) comply with all requests by **TM Legal** for information and documents reasonably required by **TM Legal** in connection with the **Dispute** unless the Insured is prevented from doing so by obligations of, or undertakings as to, confidentiality or use of information;
 - (viii) afford **TM Legal** the opportunity to attend all meetings, conferences and consultations with the **Insured's** counsel and the **Insured's** expert witnesses and any without prejudice meetings or telephone conferences;
 - (ix) inform **TM Legal** as soon as reasonably practicable of any change in the **Representative's** appraisal of the **Insured's** prospects of success in the **Dispute**;
 - (x) inform **TM Legal** as soon as reasonably practicable if the **Representative's** appraisal of the **Insured's** prospects of success changes materially from that set out in the **Proposal**;
 - (xi) use its best endeavours to seek to recover the **Premium** from the **Other Side** in the event of a **Positive Outcome**; and
 - (xii) hold all sums recovered from the **Other Side** subject to a lien for the **Insured's** liability to the **Insurer** for the **Premium** or the proportion payable by the **Insured** in accordance with clause 6(b) below.
- (c) The **Insured** must:
- (i) make available to the **Representative** all information and documents and provide such assistance as may be relevant to the **Representative's** appraisal and conduct of the **Dispute**;
 - (ii) deal promptly and diligently with all requests for assistance and instructions by the **Representative** including by providing all information, evidence and documents requested by the **Representative**; and
 - (iii) devote such resources of finance and labour to the **Dispute** as are requested by the **Representative** and as are necessary in order to enable the **Representative** to conduct the **Dispute Quickly, Justly and Cheaply**; and
 - (iv) subject to clause 2.2(d), cooperate with and comply with all advice given by the **Representative** in relation to the conduct of the **Dispute**,
- and the **Insured** must not:
- (v) withdraw instructions from the **Representative** without the prior written consent of **TM Legal**;
 - (vi) engage in or procure others into engaging in any of the conduct referred to in clause 2.2 above.
- (d) At any time during the **Dispute** the **Insured** may, acting on advice from the **Representative**, agree to an **ADR** with the **Other Side** or any other party to the **Dispute** that is named in the **Schedule**, in which case:
- (i) the **Insured** or the **Representative** will promptly notify **TM Legal** in writing of the proposed **ADR**;
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- (ii) before the **ADR**, the **Representative** will, and the **Insured** will instruct the **Representative** to, co-operate with **TM Legal** to agree a strategy for the **ADR** and the arrangements for keeping **TM Legal** informed of developments during the **ADR**.
- (iii) **TM Legal** may attend the **ADR**; and
- (e) **TM Legal** may deal with any request for **TM Legal's Approval** that the **Representative** may make during the **ADR**;

4.3 Prospects of success

If at any time after the **Policy Commencement Date**:

- (a) the **Representative** informs **TM Legal** that the **Insured** is more likely than not to lose the **Dispute** or that their appraisal of the **Insured's** chances of success in the **Dispute** has materially deteriorated; or
- (b) **TM Legal** reasonably forms the view that the **Insured** is more likely than not to lose the **Dispute** or not obtain all of the compensation or other relief sought,

the **Representative** or **TM Legal**, as the case may be, must notify the **Insured** in writing together with reasons for its view.

4.4 Applications for Costs

The **Insured** must:

- (a) instruct the **Representative** to resist any application by the **Other Side** for payment or assessment of **Other Side's Costs** unless the **Insured** has **TM Legal's Approval** not to do so;
- (b) notify **TM Legal** in writing as soon as reasonably practicable if the **Insured** becomes liable for **Other Side's Costs** or if assessment of **Other Side's Costs** is proposed or ordered;
- (c) instruct the **Representative** to consult with the **Insurer** in responding to an order for payment or assessment of **Other Side's Costs** including, without limitation, in respect of the appointment of a costs assessor; and
- (d) inform **TM Legal** as soon as reasonably practicable of all offers made by the **Other Side** to settle its claims for **Other Side's Costs**, interest on those costs and the costs of any assessment.

4.5 Applying for TM Legal's Approval

- (a) The **Insured** may make an application for **TM Legal's Approval** at any time during the **Dispute** but the **Insured** and the **Representative** must anticipate that **TM Legal** may not be in a position to respond in less than 5 working days of a request for **TM Legal's Approval**.
 - (b) Each application for **TM Legal's Approval** must be in writing, setting out details of **TM Legal's Approval** sought. **TM Legal** may require the **Insured** to provide any information or evidence on which the **Insured** relies in support of the **Insured's** application. The **Insured** must comply with all reasonable requests by **TM Legal** for information in connection with the **Insured's** application unless the **Insured** is prevented from doing so by obligations of, or undertakings as to, confidentiality or use of information
 - (c) **TM Legal** will determine the **Insured's** application (and whether or not to grant **TM Legal's Approval**) based on a consideration of whether a reasonably prudent and commercial uninsured litigant would pursue the course of action for which the **Insured** seeks **TM Legal's Approval**.
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- (d) **TM Legal** will provide its written decision on the **Insured's** application within 5 working days of the date on which they receive the **Insured's** application. If **TM Legal** does not provide the **Insured** with its decision within that period, **TM Legal's Approval** will be deemed to have been granted unconditionally. Where it is necessary to obtain **TM Legal's Approval** within a shorter timeframe, **TM Legal** will use its best endeavours to provide **TM Legal's Approval** within the required timeframe.
- (e) **TM Legal** will:
 - (i) grant **TM Legal's Approval**;
 - (ii) refuse **TM Legal's Approval**; or
 - (iii) grant **TM Legal's Approval** subject to the terms and conditions set out in **TM Legal's** written decision.
- (f) Despite the above, during a **Court** hearing or **ADR** the **Insured** may seek **TM Legal's Approval** orally and **TM Legal** will use reasonable endeavours to provide an oral decision during the **ADR** or **Court** hearing which will be confirmed by **TM Legal** in writing subsequently.
- (g) The **Insured** may apply for a review of **TM Legal's** decision if the **Insured** disagrees with **TM Legal's** refusal to grant **TM Legal's Approval** or the terms and conditions on which **TM Legal's Approval** has been granted. The review will be conducted by Senior Counsel to be mutually agreed upon by both the **Insurer** and the **Insured** or, failing agreement, to be appointed by the President of the Law Society of the relevant **Australian Jurisdiction**. **TM Legal's** decision will be final unless Senior Counsel advises that **TM Legal's Approval** should be granted or should be granted subject to the conditions specified by Senior Counsel. In making his or her decision Senior Counsel will apply the test set out in clause 4.5(c) above. Senior Counsel's fee for conducting the review will be payable in equal proportions by the **Insurer** and the **Insured**.

4.6 Conditions applicable to Insured Liability for Own Disbursements.

- (a) The **Insurer** will only be liable to pay **Own Disbursements** after the **Conclusion of the Dispute** and only if it gave the **Insured** written notice of its agreement to do so before the **Policy Commencement Date**.
- (b) If the **Insurer** has agreed with the **Insured** to insure **Own Disbursements**, then the **Insurer** will only be liable to pay **Own Disbursements** which the **Insured** incurs in connection with the **Dispute** up to the **Limit of Cover** specified in the **Schedule** to the extent that:
 - (i) the **Insured** does not recover **Own Disbursements** from the **Other Side** either as part of **Costs** on an assessment or as part of any settlement which is attributed by the settlement agreement or order as to **Costs**; and
 - (ii) the **Insured** is unable to satisfy such **Own Disbursements** from any sum or sums or monetary equivalent recovered from the **Other Side** regardless of any description of it or them by the **Insured**, the **Other Side** or anyone else.
- (c) If the **Insurer** has agreed with the **Insured** to insure **Own Disbursements**, the **Insurer** has no liability to indemnify the **Insured** for **Own Disbursements** unless:
 - (i) the **Insured** has also obtained **TM Legal's Approval** to incur **Own Disbursements**, if they equal to or greater than A\$15,000 in total;

- (ii) it is reasonably necessary to incur **Own Disbursements** in order to prosecute or defend the **Dispute** and they are reasonable in amount;
 - (iii) where **Own Disbursements** represent payment for the work of others (such as, but not limited to, expert witnesses and counsel), the work is monitored by the **Representative** in order to ensure that it is necessary for the prosecution of the **Dispute** and is reasonable in amount; and
 - (iv) the **Insured** has used all reasonable endeavours (as determined by **TM Legal**) to recover **Own Disbursements** from the **Other Side**.
- (d) The **Insured** will repay to the **Insurer** any **Insured Liability** for **Own Disbursements** for which the **Insurer** has indemnified the **Insured** to the extent that the **Insured** subsequently recovers them from the **Other Side**.
- (e) The **Insurer** will not be liable to indemnify the **Insured** for **Taxes** on any **Insured Liability** if and to the extent that the **Taxes** can be recovered.
- (f) If, without **TM Legal's Approval**, the **Insured** concludes a settlement with the **Other Side** or discontinues the **Dispute** on terms which preclude the **Insured's** recovery of **Own Disbursements** then, in addition to any other rights the **Insurer** has under the **Policy** and the **Insurance Contracts Act**, the **Insurer** has no liability to the **Insured** for those amounts.

4.7 Reimbursement and offset

In the event of a **Positive Outcome**, the **Insured** must:

- (a) reimburse the **Insurer** in respect of any sums paid by the **Insurer** under this **Policy** to the extent that such sums can be met out of sums recovered from the **Other Side** and, for this purpose, the **Insured** agrees to hold on trust all sums which the **Insured** recovers from the **Other Side** to the **Insurer's** order pending such reimbursement; and
- (b) offset all sums recovered from the **Other Side** against any claim due in respect of the **Insured Liability**.

5. Termination of Cover

- (a) Without limiting the Insurer's rights of cancellation under the Insurance Contracts Act, the Insurer may cancel the Policy on three working days' written notice to the Insured (at either the Insured's broker's address or the last address of the Insured given to the Insurer) if:
 - (i) the Insured fails to disclose to the Insurer or misrepresents to the Insurer any information that the Insured knows or could reasonably be expected to know was relevant to the Insurer's decision to insure the Insured and on what terms;
 - (ii) the Insured fails to comply with its duty of utmost good faith to the Insurer;
 - (iii) the Insured fails to comply with a provision of this Policy including any of the general conditions set out in section 3 or the claim conditions set out in section 4; or
 - (iv) the Insured makes a fraudulent claim under the Policy.
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- (b) If the Insurer terminates this Policy pursuant to the Insurance Contracts Act or paragraph (a) above, the Insured will not be liable to pay the Balance of Premium in accordance with clause 6 should a Positive Outcome be achieved.
- (c) The Insurer may cancel the Policy on 30 working days written notice to the Insured (at either the Insured's broker's address or the last address of the Insured given to the Insurer) following receipt of a notice referred to in clause 4.3 (a).
- (d) If the Insurer terminates this Policy pursuant paragraph (a) above:
 - (i) the Insurer's obligations under the Policy, other than obligations accrued, are terminated; and
 - (ii) the Insured will only be liable to pay the Balance of Premium that has accrued at the Stage of termination in accordance with clause 6 should a Positive Outcome be achieved.
- (e) The accrued obligations of the Insurer referred to in paragraph (d)(i) above include payment of any quantified Adverse Costs Order pursuant to clause 1 in respect of Costs which arise in, or are attributed to, the period ending on the date the Insurer's termination becomes effective.

6. Premium

- (a) The Insured must pay to the Insurer the Deposit Premium plus Taxes within 14 days of the Issue Date. The Deposit Premium is non-refundable whatever the outcome of the Dispute.
- (b) The Insured must pay the Insurer the Balance of Premium plus Taxes within 20 working days of the date of a Positive Outcome. No part of the Balance of Premium will become payable until the date of a Positive Outcome and no Balance of Premium or part thereof will be payable if the Insured does not achieve a Positive Outcome.
- (c) Except as provided in paragraph (d) below, the Insured must pay the Balance of Premium when due, whether or not it may be recoverable by the Insured from the Other Side and, for this purpose, the Insured agrees to hold on trust all sums which the Insured recovers from the Other Side to the Insurer's order pending payment of the Balance of Premium (or the relevant proportion thereof).
- (d) If the Balance of Premium (or the relevant proportion thereof) payable by the Insured is larger than the total of all sums which the Insured recovers from the Other Side, the Insured will only be obliged to pay that proportion of the Balance of Premium as is equivalent to the sum or sums which the Insured recovers (following any reimbursement or offset pursuant to clause 4.7 above).

7. Subrogation

If the Insurer makes a payment under this Policy, the Insurer will be subrogated to any and all of the Insured's rights in connection with such payment. The Insured also agrees to give the Insurer all assistance as the Insurer may reasonably require in relation to the exercise by the Insurer of the Insurer's subrogated rights.

8. Third party beneficiaries

A person who is not identified as the Insured in the Schedule has no right under the Insurance Contracts Act to enforce any term of this contract

9. Dishonest and fraudulent claims

Subject to the Insurance Contracts Act, if the Insured or the Representative makes any claim under this Policy which is fraudulent or dishonest in any way, this Policy will be cancelled from the outset and all rights that the Insured has under this Policy will be forfeit. The Insurer will be entitled to recover any payments the Insurer has previously made.

10. Assignment

The Insured must not assign its rights under this Policy without the prior written consent of the Insurer.

11. Dispute Resolution

This Insurance is not subject to the provisions of the Insurance Council of Australia's General Insurance Code of Practice.

Complaints and disputes

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 Thomas Miller Claims Management Limited in the first instance:

Paul Lyons
Thomas Claims Management Ltd.,
Level 10, 117 York Street,
Sydney,
NSW 2000
Australia.
paul.lyons@thomasmiller.com

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

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: jdaustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16,
1 Macquarie Place,
Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

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
Email: info@afca.org.au
Post: GPO Box 3
Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

Paul Lyons,
Thomas Claims Management Ltd.,
Level 10, 117 York Street,
Sydney,
NSW 2000
Australia.
paul.lyons@thomasmiller.com

12. Several Liability Clause [LMA5096 (Combined Certificate)]
PLEASE NOTE – This notice contains important information.
PLEASE READ CAREFULLY

- 12.1 The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.
- 12.2 The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.
-

12.3 In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

12.4 Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

13. Cyber Risks Exclusion LMA5484

13.1 This Policy does not cover legal costs and expenses for, incurred as a result of, or arising out of a Cyber Act or Cyber Incident.

14 Notices

14.1 All notices, claim notification, applications for TM Legal's Approval or consent to change the Representative and other communications shall be sent by post, by email or by hand to the TM Legal at the following address:

FAO Paul Lyons
Thomas Miller Claims Management Pty Ltd (ABN 65 610 646 092 | CAR 1285071)
t/as Thomas Miller Litigation Insurance
Level 10,
117 York Street,
Sydney
NSW 2000
Australia

paul.lyons@thomasmiller.com

+612 8262 5864

14.2 All notices, TM Legal's Approvals, decisions and other communications shall be deemed to have been received by the Insured if they are sent by post, by hand or by email to the Representative.

15 Sanctions Limitation and Exclusion Clause

The Insurer shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer or any member of the Insurer's group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

Schedule

Hamilton Syndicate 4000 and Mosaic Syndicate 1609 at Lloyd's (herein called "the Insurer")

Policy Number:

Declarations

- Item 1. **Insured** (name and address):
- Item 2. **Issue Date:**
- Item 3. **Policy Commencement Date:**
- Item 4. **Deposit Premium:**
- Item 5. **Balance of Premium:**
- Item 6. **Limit of Cover:**
- Item 7. **Other Side:**
- Item 8. **Positive Outcome:** The recovery by the Insured of any sum of money or monetary equivalent from or for the Other Side regardless of any description which may be attributed to it by the Insured, the Other Side or anyone else
- Item 9. **Representative:**
- Item 10 . **Australian Jurisdiction :**

Signed by Redvers Cunningham of Thomas Miller Specialty Underwriting Agency Limited on behalf of Hamilton Lloyd's Syndicate 4000 and Mosaic Syndicate 1609 at Lloyd's.

Thomas Miller Legal is a trading style of Thomas Miller Specialty Underwriting Agency Limited
Registered in England (02519540) at 90 Fenchurch Street, London EC3M 4ST
Authorised and Regulated by the Financial Conduct Authority (312791)

Thomas Miller Claims Management Pty Ltd (ABN 65 610 646 092 | CAR 1285071 Corporate Authorised
Representative of General Insurance Brokers of Australia Pty Ltd (ABN 94 135 132 455 | AFSL 342 546)

Privacy Notices

The Insurer's Privacy Notice can be viewed on the following webpage:

<https://www.hamiltongroup.com/media/Hamilton-DataPrivacyNotice-2019.pdf>

Questions about the Insurer's Privacy Policy and how it processes personal data may be sent to:

Data Protection Manager,
Hamilton Insurance,
St. Helen's,
1 Undershaft
London,
EC3P 3DQ,
United Kingdom
Email: HULCompliance@hamiltongroup.com

Thomas Miller's Privacy Notice can be viewed on the following webpage:

<https://www.thomasmiller.com/cookie-privacy-policy/>

Questions about Thomas Miller's Privacy Policy may be sent to its Data Controller and Data Protection Officer, whose details are as follows:

Data Controller
Name: Thomas Miller
Phone: +44 (0)207 283 4646
Email: contactus@thomasmiller.com
Address: 90 Fenchurch Street London EC3M 4ST United Kingdom

Data Protection Officer
Name: David Smith
Phone: +44 (0)207 204 2545
Email: david.smith@thomasmiller.com
Address: 90 Fenchurch Street London EC3M 4ST United Kingdom