



QBE Insurance (Australia) Limited

# Accountants Professional Indemnity (Civil) Policy

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## Accountants Professional Indemnity (Civil) Policy

In consideration of the payment of the premium to QBE Insurance (Australia) Limited ('QBE') and in reliance on the written proposal, declaration and any other underwriting information provided, which will be deemed to be incorporated into and to be the basis of this Policy, QBE will indemnify the Insured as follows.

### Insuring clauses

#### 1. Civil liability

QBE will indemnify the Insured up to the Limit of Indemnity for any Valid Claim subject to the terms of this Policy.

#### 2. Costs and expenses

In addition, QBE shall pay Costs and Expenses incurred with the written consent of QBE in the defence or settlement of any Valid Claim, up to an amount equal to the Limit of Indemnity or NZD5,000,000, whichever is the lesser.

### Automatic extensions

The following extensions to the Policy are included automatically, provided that each extension is subject to the terms, conditions and exclusions of this Policy and does not increase the Limit of Indemnity stated in the Schedule (unless otherwise stated).

#### 1. Automatic reinstatement

If a Valid Claim or Valid Claims shall exhaust (or partially exhaust) the Limit of Indemnity under this Policy, QBE agrees to reinstate the Limit of Indemnity to the extent of the amount paid in respect of that Valid Claim or Valid Claims. Provided that QBE's total liability under this Policy shall not exceed:

- 1.1 the Limit of Indemnity, in respect of any one Valid Claim or all related Valid Claims; and
- 1.2 three times the Limit of Indemnity, in respect of all Valid Claims which are not related.

For the purpose of this extension, Valid Claims are related if they arise out of the same, identical or a series of acts, errors, omissions or conduct, or arise out of or are attributable to the same originating source or cause.

#### 2. Breach of contract

QBE will indemnify the Insured for any Valid Claim for the actual or alleged breach of a contract for the provision of professional services.

#### 3. Consequential costs and court attendance costs

QBE will indemnify the Insured for the reasonable costs and expenses incurred with QBE's written consent for:

- 3.1 reproducing or delivering files or other documents; or
- 3.2 attendance at meetings or Court.

Subject to the terms of this Policy, QBE will indemnify the Insured for seventy-five per cent (75%) of the reasonable value of time expended with the written consent of QBE, by any partner or Employee of the Insured in connection with the activities in 3.1 and 3.2 above. The value of such time shall be calculated at the Insured's normal rate for the personnel involved.

The maximum amount payable by QBE in respect of this extension will be NZD250,000 any one Claim and in the aggregate which will form part of and is not in addition to the Limit of Indemnity. Extension 1 (Automatic Reinstatement) shall not apply to this extension.

There is no Excess applicable to this Extension.

#### 4. Consultants, subcontractors and agents

QBE will indemnify the Insured for any Valid Claim for any act, error or omission committed by any consultant, subcontractor or agent for whose act, error or omission the Insured is legally liable. Provided that this indemnity will not extend to any such consultant, subcontractor or agent unless they are included in Definition 4.2 (Employee).

#### 5. Continuous cover

QBE agrees that, notwithstanding Exclusion 20 (Prior or Pending), if the Insured has failed to notify a Claim, fact or circumstance to QBE or any other insurer under an earlier Professional Indemnity insurance policy then QBE will accept the notification of such Claim, fact or circumstance under this Policy. Provided that:

- 5.1 the Insured has continually been insured under a Professional Indemnity insurance policy between the date when such notification should have been given and the date when such notification was, in fact given; and
- 5.2 the terms and conditions applicable to this extension and to that notification shall not be those of this Policy but shall be the terms and conditions (including the Limit of Indemnity and Excess) applicable to the Professional Indemnity insurance policy under which the notification should have been given; and
- 5.3 where there has been prejudice caused by such late notification, the liability of QBE will be reduced to the amount for which QBE would have been liable had the prejudice not occurred.

## 6. Costs of representation at registration board proceedings

If any complaint (which may form the basis of a Valid Claim) is lodged against the Insured with a statutory registration board or similar regulatory authority, or if any statutory or professional body claims jurisdiction to inquire into or adjudicate on any such matter, then QBE shall pay, within the terms of this Policy and subject to the limits set out in Insuring Clause 2 (Costs and Expenses) above, Costs and Expenses incurred by or on behalf of QBE or by or on behalf of the Insured with QBE's prior written consent, in respect of the investigation and defence of the Insured at such proceedings provided that QBE shall be entitled to appoint a solicitor or counsel to represent the Insured.

The maximum amount payable by QBE in respect of this extension will be NZD500,000 any one Claim and in the aggregate which will form part of the limit under Insuring Clause 2 (Costs and Expenses). Automatic Extension 1 (Automatic Reinstatement) will not apply to this extension.

The Excess applicable to this extension is NZD1,000.

## 7. Defamation

QBE will indemnify the Insured for any Valid Claim for unintentional defamation.

## 8. Fair Trading Act 1986

QBE will indemnify the Insured for any Valid Claim for compensation made against the Insured alleging a breach of sections 9 to 14 of the Fair Trading Act 1986 (or any similar fair trading legislation that may apply in the States, Territories or Countries of the jurisdiction specified in the Schedule).

## 9. Fidelity (insured's own)

Notwithstanding Exclusion 10 (Fraud and dishonesty), QBE agrees to indemnify the Insured for Loss where such Loss is sustained in consequence of any dishonest or fraudulent act or omission of any specific and identifiable Employee. Provided that QBE will not be liable:

- 9.1 for any Loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned; and
- 9.2 to indemnify any Insured committing or condoning any dishonest or fraudulent conduct; and
- 9.3 to indemnify the Insured against Loss of which there is no proof as to its existence and/or amount other than by an inventory or profit and loss computation;

and provided that:

- 9.4 Costs and Expenses incurred with the written consent of QBE to recover such Loss will be deemed to be Costs and Expenses incurred in the defence or settlement of any Claim as provided under Insuring Clause 2 (Costs and Expenses) of this Policy; and
- 9.5 every financial transfer for a value in excess of NZD10,000 is approved by two (2) authorised persons; and
- 9.6 such Loss is first discovered by the Insured during the Period of Insurance and is immediately notified in writing to QBE; and
- 9.7 the liability of QBE under this extension will not exceed NZD1,000,000 in the aggregate for any one Loss or related Losses, which will form part of and is not in addition to the Limit of Indemnity stated in the Schedule; and
- 9.8 Automatic Extension 1 (Automatic Reinstatement) will not apply to this extension.

For the purpose of this extension, Losses are related if they arise out of the same, identical or a series of acts, errors, omissions or conduct, or arise out of or are attributable to the same originating source(s), cause(s) or circumstance(s).

## 10. Fraud and dishonesty of employees

Notwithstanding Exclusion 10 (Fraud and dishonesty), QBE agrees to indemnify the Insured for legal liability for any Valid Claim which is brought about or contributed to by any dishonest, fraudulent, criminal, malicious or deliberate act or omission of or on behalf of an Employee of the Insured. Provided that:

- 10.1 such indemnity will not be provided to any person committing or condoning any such act or omission; and
- 10.2 in respect of Claims involving theft or misappropriation of funds for which the Insured is legally liable to account to another, the liability of QBE is conditional upon all financial transfers being approved by two (2) authorised persons.

## 11. Intellectual property

QBE will indemnify the Insured for any Valid Claim for unintentional infringement of copyright, trademark, registered design or patent, plagiarism or breach of confidentiality, arising directly from the Professional Business Practice.

## 12. Internet liability

QBE will indemnify the Insured against any Valid Claim made against the Insured in connection with their Professional Business Practice as defined in the Schedule for unintentional:

- 12.1 infringement or unauthorised use of intellectual property rights or alleged intellectual property rights;
- 12.2 unauthorised use of names (including domain names), trade names, trade addresses, service marks, service names, titles, slogans, formats, characters, character names, characterisations, plots, musical compositions, performances, logos, artwork, graphics, photographs or program materials;
- 12.3 passing off;

- 12.4 breach of confidentiality or infringement of any right to privacy, including any alleged breach of the terms of the Privacy Act 2020;
- 12.5 misuse of information which is either confidential or subject to statutory restrictions on use;
- 12.6 transmission of any computer virus or programme or code that causes loss or damage to any computer system and/or prevents or impairs any computer system from performing and/or functioning accurately and/or properly;
- 12.7 belittling of a product or work (whether completed or not) of others; or
- 12.8 unauthorised taking for use of any advertising idea, material, slogan, style or title of others;

committed or alleged to have been committed by the Insured in the provision of its website, use of the Internet, electronic mail or any electronic network.

QBE will not be liable in respect of any Claim arising out of or connected with any chat rooms, electronic bulletin boards or electronic open forum debates or social networking websites.

The maximum amount payable by QBE in respect of this extension will be NZD250,000 any one Claim and in the aggregate which will form part of and is not in addition to the Limit of Indemnity. Automatic Extension 1 (Automatic Reinstatement) will not apply to this extension.

### 13. Irrecoverable fees and disbursements

Notwithstanding Exclusion 21 (Refund of Fees), if a Claim is made against the Insured that:

- 13.1 exceeds the amount of fees and disbursements owed by the claimant to the Insured; and
- 13.2 those fees and disbursements relate to professional services that specifically gave rise to the Claim; and
- 13.3 QBE is of the view that, on balance, those fees and disbursements are not recoverable because of the matters giving rise to the Claim; and
- 13.4 QBE consider such fees and disbursements to be reasonable;

then QBE will pay the Insured fifty per cent (50%) of the amount of those fees and disbursements if the Claim can be partly or wholly settled by the Insured waiving payment of those fees and disbursements.

The maximum amount payable by QBE in respect of this extension will be NZD150,000 any one Claim and in the aggregate which will form part of and is not in addition to the Limit of Indemnity. Automatic Extension 1 (Automatic Reinstatement) will not apply to this extension.

### 14. Joint venture liability

QBE will indemnify the Insured for any Valid Claim arising from the Insured's involvement in any joint venture partnership. Indemnity provided by this extension is limited to the Insured's own liability as a joint venture partner.

### 15. Loss of documents

QBE will indemnify the Insured for any Valid Claim for loss of any Documents that have been destroyed, damaged, lost or mislaid. Provided that such coverage will be limited to loss of Documents:

- 15.1 which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
- 15.2 that has occurred within the territorial limits of New Zealand or Australia.

The Excess applicable to this extension is NZD1,000.

### 16. Previous business

QBE will indemnify the Insured for any Valid Claim made against any person who is or becomes, during the Period of Insurance, a partner, director or principal of the Insured for any civil liability incurred on the part of such person in the conduct of the same profession as the Insured's Professional Business Practice before that person joined the Insured. Provided that this Policy will only cover the part of the loss that exceeds any indemnity available to that person under any other insurance policy.

### 17. Public relations expenses

QBE will indemnify the Insured for the reasonable fees, costs and expenses, incurred with QBE's prior written consent, of a public relations firm or consultant, crisis management firm or law firm, which the Insured may, in the reasonable exercise of his or her discretion, engage in order to prevent or limit the adverse effects of negative publicity which it is anticipated may arise from any Valid Claim.

The maximum amount payable by QBE under this extension during the Period of Insurance will be NZD50,000 in the aggregate which forms part of, and is not in addition to, amounts payable pursuant to Insuring Clause 2 (Costs and Expenses).

## Definitions

In this Policy, including any endorsements, unless specifically stated to the contrary:

### 1. 'Claim' means:

- 1.1 legal proceedings instituted and served on the Insured claiming damages; or
- 1.2 any allegation of wrongdoing by the Insured or for which the Insured is legally liable, together with a demand for damages; or
- 1.3 any threat or intimation that legal proceedings will be issued against the Insured.

### 2. 'Costs and Expenses' means:

- 2.1 all necessary and reasonable legal costs, disbursements, witness costs, assessor costs or expert costs incurred by QBE solely in investigating, defending or settling any Valid Claim;
- 2.2 all necessary and reasonable expenses (other than loss of earnings or profits) that are incurred by the Insured with the prior written consent of QBE solely in assisting QBE or its solicitors in the investigation, defence or settlement of any such Valid Claim or Loss;
- 2.3 any interest awarded by a court up until the day on which the judgment debt is paid in full.

### 3. 'Documents' means:

Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but will not include bearer bonds or coupons, stamps, bank currency notes or any other negotiable instrument.

### 4. 'Employee' means:

- 4.1 any person employed by the Insured under a contract of service or apprenticeship, on a full-time, part-time or seasonal basis; or
- 4.2 any person who is or has been a consultant to the Insured firm named in the Schedule but only in respect of that consultant's conduct of the Professional Business Practice provided any fees accruing from such work will inure to the benefit of the Insured and is taken into account when ascertaining the total annual income declared to QBE.

### 5. 'Excess' means:

The amount of Excess specified in the Schedule.

### 6. 'Family Member' means:

- 6.1 any spouse, domestic partner, or companion; or
  - 6.2 any parent, or parent of the spouse; or
  - 6.3 any sibling or child;
- of the Insured.

### 7. 'Financial Institution' means:

Any bank, building society, credit union, finance company, fund manager, stockbroker, merchant or investment bank, insurance company (general/life/reinsurer/underwriting agency), mortgage originator, margin lender or share registry.

### 8. 'Insured' means:

- 8.1 the person, persons, partnership, company, corporation or other entity specified as the Insured in the Schedule including their predecessors in business; and
- 8.2 any person who is, during the Period of Insurance, a principal, partner, director or Employee of the Insured; and
- 8.3 any former principals, partners, directors or Employees of the Insured; and
- 8.4 the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured; and
- 8.5 each firm or company established specifically for the purpose of providing services as a corporate trustee where appointed in that capacity, but only where all the directors or partners of the company are partners or Employees of the Insured specified in the Schedule.

Provided that such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

### 9. 'Limit of Indemnity' means:

The Limit of Indemnity specified in the Schedule.

### 10. 'Loss' means:

Actual loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank and currency notes that have been illicitly taken from and belonged to the Insured, with intent to deprive the Insured of such money or securities and confer the benefit of them on the Employee or any other person.

**11. 'Period of Insurance' means:**

The Period of Insurance specified in the Schedule.

**12. 'Policy' means:**

This wording, the Schedule and any endorsements thereto.

**13. 'Professional Business Practice' means:**

The business conducted by the Insured, as specified in the Schedule, whereby the Insured pursues their profession and which is conducted under the name specified as the Insured in the Schedule. In addition, for trustees activities, this shall include any joint and severable exposures arising from the Insured's appointment as a trustee. If the practice should change its name and there is no other change which materially alters the risk, the business will continue to be deemed to be the 'Professional Business Practice'.

**14. 'Public Listed Company' means:**

Any company, trust or entity listed on the New Zealand or Australian Stock Exchanges (primary or secondary listing) or similar exchange anywhere in the world.

**15. 'Retroactive Date' means:**

The Retroactive Date specified in the Schedule.

**16. 'Schedule' means:**

The current Schedule to this Policy.

**17. 'Unconnected Partner' means:**

Any person who is a partner of the practice specified as the Insured in the Schedule and who receives no benefit whatsoever from the distribution under the discretionary trust deed.

**18. 'Valid Claim' means:**

18.1 any Loss that occurred subsequent to the Retroactive Date and is discovered by the Insured and notified to QBE during the Period of Insurance; or

18.2 any Claim:

18.2.1 first made against the Insured during the Period of Insurance; and

18.2.2 notified in writing by the Insured to QBE during the Period of Insurance; and

18.2.3 alleging civil liability, by any act, error, omission or conduct that occurred subsequent to the Retroactive Date in connection with the Insured's Professional Business Practice.

Any Claims or Losses that do not satisfy 18.1 or 18.2 of this definition will not be covered under this Policy.

## Exclusions

### 1. Anti-Money Laundering and Countering Financing of Terrorism Act 2009

QBE will not be liable in respect of any Claim or Loss alleging or in respect of any breach of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

### 2. Asbestos

QBE shall not be liable in respect of any Claim alleging, resulting from, directly or indirectly arising out of, in consequence of, or contributed to by, asbestos, asbestos fibres or derivatives of asbestos.

### 3. Assumed duty or obligation

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by the Insured, which is not assumed in the normal conduct of the Insured's Professional Business Practice.

### 4. Death or bodily injury

QBE will not be liable in respect of any Claim or Loss alleging or in respect of death, bodily or mental injury or illness.

### 5. Directors liability

QBE shall not be liable in respect of any Claim alleging or in respect of any duties of any Insured as a director or legal officer of any company or entity.

### 6. Electronic data

QBE will not be liable in respect of any Claim or Loss alleging or arising directly or indirectly out of:

- 6.1 corruption, erasure, theft, alteration of; or
- 6.2 access or lack of access to; or
- 6.3 interference with;

data held electronically by or belonging to the Insured wholly or partly caused by any computer virus or by any person whether a partner, director or Employee currently employed by the Insured or not unless such loss or liability arises as a result of an act, error or omission by the Insured limited solely to liabilities arising in connection with the Insured's Professional Business Practice.

### 7. Employers liability

QBE will not be liable in respect of any Claim or Loss alleging or arising out of any breach of any obligation owed by the Insured as an employer.

### 8. Financial condition

QBE will not be liable in respect of any Claim or Loss alleging or in respect of the insolvency, bankruptcy, receivership, statutory management or liquidation of the Insured.

### 9. Fines and penalties

QBE shall not be liable in respect of any Claim alleging or in respect of any liability to pay taxes, fines or penalties, or liquidated, aggravated, multiple, punitive or exemplary damages.

### 10. Fraud and dishonesty

QBE will not be liable in respect of any Claim or Loss alleging or brought about or contributed to by any dishonest, fraudulent, criminal, malicious or deliberate act or omission of or on behalf of the Insured or of any person at any time employed by the Insured.

### 11. Harassment/discrimination

QBE will not be liable in respect of any Claim or Loss alleging or arising out of bullying, harassment (including but not limited to sexual harassment or molestation) or discrimination of any kind.

### 12. Insured and family members

QBE will not be liable in respect of any Claim or Loss brought or maintained by or on behalf of:

- 12.1 any Insured, any subsidiary or any associated entity (whether incorporated or not) of the Insured; or
- 12.2 any person who, at the time of the act, error or omission giving rise to the Claim or Loss, is a Family Member.

### 13. Investment advisers

QBE will not be liable in respect of any Claim or Loss alleging or arising out of the Insured's capacity as an investment adviser/financial planner in respect of:

- 13.1 the sale or promotion of any investment that is not compliant with all statutory requirements; or
- 13.2 the sale and/or promotion of any contributory mortgage or contributory scheme, including acting as a promoter or broker, and providing any advice in relation to investment in a contributory mortgage or contributory scheme; or
- 13.3 diminution in value of money, securities, property, or any other item of value, unless such diminution in value is caused by any act, error or omission of the Insured in the execution or implementation of any investment advice or any investment decision; or
- 13.4 the sale or promotion of any reverse mortgage or reverse mortgage scheme, including acting as a broker in respect of such scheme and any advice in relation to the release of any equity as part of a reverse mortgage product; or
- 13.5 the failure of any investment to:
  - 13.5.1 perform as stated within any prospectus, product brochure or advertising; or
  - 13.5.2 meet any profit forecast, interest rate yield or dividend increase; or
  - 13.5.3 increase in any promised or stated way.

### 14. Jurisdiction

QBE will not be liable in respect of any legal action:

- 14.1 first brought in a court outside the jurisdiction of the countries specified in the Schedule; or
- 14.2 brought in a court within the jurisdiction of the countries specified in the Schedule to enforce a judgment of a court outside the jurisdiction of the countries specified in the Schedule whether by way of a reciprocal agreement or otherwise; or
- 14.3 in which the proper law to be applied to the issues or any of them is that of a country other than the countries specified in the Schedule.

### 15. Liability assumed

QBE will not be liable in respect of any Claim or Loss:

- 15.1 alleging or in respect of any promise, guarantee, condition or representation that the Insured's services will meet a particular level or standard or timeframe, or produce a particular result. However, this exclusion will not apply to liability that would have attached in the absence of such promise, guarantee, condition or representation;
- 15.2 in respect of liability incurred by or on behalf of the Insured arising from an agreement, where liability would not otherwise have existed in the absence of the agreement. However, this exclusion will not apply to an agreement by or on behalf of the Insured to provide professional services to a client or customer, except to the extent that the Insured has agreed to accept a liability regardless of fault;
- 15.3 in respect of a trading debt or a trading liability incurred, or financial or other guarantee granted by the Insured;
- 15.4 in respect of which the Insured has, without the written consent of QBE, surrendered or waived any right of contribution or indemnity to which the Insured might otherwise have been entitled.

### 16. Nuclear

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly caused by or contributed to or arising from nuclear energy operations, including but not limited to:

- 16.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or
- 16.2 any process of nuclear fission or fusion or handling radioactive material or irradiated nuclear fuel which operations include but are not limited to:
  - 16.2.1 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
  - 16.2.2 the use, handling or transportation of radioactive materials; or
  - 16.2.3 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

This exclusion will not apply to any Claim arising from radioisotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary scientific, medical, agricultural, commercial or industrial purposes.

## 17. Obligations to employees

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly based upon, attributable to, or in consequence of bodily injury, mental injury, sickness, disease or death of any Employee of the Insured or damage to or destruction of any property of any Employee, including loss of use, arising out of or in the course of their employment.

## 18. Occupiers liability

QBE will not be liable in respect of any Claim or Loss alleging or arising out of the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

## 19. Pollution

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly caused by or contributed to, by or arising from seepage, pollution or contamination of any kind.

## 20. Prior or pending

QBE will not be liable in respect of any Claim or Loss:

- 20.1 made, threatened or in any way intimated prior to the commencement of the Period of Insurance; or
- 20.2 arising from any circumstance of which the Insured had or should have become aware, prior to the commencement of the Period of Insurance, and which the Insured or a reasonable Insured should have considered may give rise to a Claim or Loss, whether notified under any other insurance or not.

## 21. Refund of fees

QBE will not be liable in respect of any Claim or Loss for a refund of professional fees, by way of damages or otherwise.

## 22. Related or associated entities

QBE will not be liable in respect of any Claim or Loss brought or maintained by or on behalf of any person, firm, company or entity:

- 22.1 which is an Insured or a subsidiary of the Insured; or
- 22.2 who was a Family Member at the time of the act, error or omission giving rise to the Claim unless the professional service was approved or qualified, at that time, by a qualified person within the practice who is not related to that Family Member; or
- 22.3 operated or controlled by any Insured; or
- 22.4 operated or controlled by any Employee, partner, nominee or trustee of any Insured; or
- 22.5 in which any Insured has a direct or indirect financial interest, (a shareholding of less than 15% in a company shall not constitute a financial interest), however this exclusion shall not apply:
  - 22.5.1 to any cover granted under Insuring Clause 2; or
  - 22.5.2 to a discretionary trust provided that where the partner or Employee who has a direct or indirect financial interest in the trust, receives a benefit under that trust, any distribution shall be overseen by an Unconnected Partner; or
  - 22.5.3 if the professional service was approved or qualified, at that time, by a qualified person within the practice who has no such direct or indirect financial interest;
- 22.6 advised or induced by the Insured to invest in or lend money to any person, firm, company or entity referred to in any of 22.1, 22.2, 22.3, 22.4, or 22.5 above or to the Insured; or
- 22.7 who is or was a director, officer or trustee of any entity that the Insured shares or shared a similar or common appointment to. This exclusion shall also apply to any Claim brought by or on behalf or in the name of such an entity at the instigation of or in solicitation, co-operation or enticement of or with any director, officer or trustee of that entity unless the Claim relates to an alleged breach of the Insured's professional duty as an accountant.

## 23. Sanctions

Notwithstanding any provision to the contrary within this Policy or any endorsements thereto, it is understood and agreed that this Policy does not insure any loss or provide any benefit under this Policy where a claim payment would breach any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulation of any country.

## 24. Supply of goods

QBE will not be liable in respect of any Claim or Loss alleging or arising from the sale, supply, installation, efficacy, or manufacture of goods by or on behalf of the Insured.

## 25. Territorial limits

QBE will not be liable in respect of any Claim or Loss alleging or arising from any act, error or omission that occurred outside the territorial limits specified in the Schedule.

## **26. Terrorism**

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly caused by, resulting from or in connection with death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purposes of this exclusion, 'Act of Terrorism' means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion will also apply to death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

## **27. Trading debts**

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the Insured or any guarantee by the Insured for a debt.

## **28. War**

QBE will not be liable in respect of any Claim or Loss alleging or directly or indirectly caused by, resulting from or in connection with loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any Government or public or local authority.

## Claims conditions

### 1. Defence and settlement of a claim

The Insured will not admit liability for or settle any Claim or incur any Costs and Expenses without the prior written consent of QBE, whose consent will not be unreasonably withheld. QBE will be entitled at any time to take over and conduct in the name of the Insured the defence or settlement of any Claim and any counterclaim.

### 2. Excess

- 2.1 In respect of each and every Claim against the Insured the amount of the Excess is payable by the Insured and QBE shall only be liable to indemnify the Insured for the amount beyond the Excess up to the amount of the Limit of Indemnity.
- 2.2 When the amount of the Excess is shown in the Schedule as 'costs exclusive' the indemnity for Costs and Expenses shall not be subject to the Excess provided that the Claim is higher than the Excess.
- 2.3 Where QBE has elected to pay all or part of the Excess in respect of any Claim, the Insured shall, within seven (7) days from the date of such payment, reimburse QBE for such payment.
- 2.4 Where QBE requires the Insured to waive all or part of any outstanding fee, properly due to the Insured, to assist in the settlement of any Claim then the amount of such waived fee shall be taken into account in determining the amount of any Excess payable by the Insured. If the amount of any waived fee is greater than the applicable Excess then seventy-five per cent (75%) of the difference will be paid by QBE to the Insured.
- 2.5 In respect of any Claim where the amount of the Claim is less than the amount of the Excess, the Insured shall bear all Costs and Expenses associated therewith unless QBE shall have agreed to meet such Costs and Expenses pursuant to Insuring Clause 2.
- 2.6 Any costs and expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Excess but shall be borne by QBE.
- 2.7 For the purpose of this condition 'Claim' means any and all Valid Claims that arise by reason of the same act, error, omission or conduct.

### 3. Insured's co-operation

The Insured will take all reasonable steps to avoid or diminish any loss in relation to any possible Claim or Loss, and will immediately disclose all information and give assistance to QBE to enable it to investigate and defend the Claim or Loss or determine its liability under this Policy.

QBE may, upon receipt of notice from the Insured of any request for indemnity under this Policy, take whatever action it considers appropriate to protect the Insured's position in respect of the Claim or Loss, and such action by QBE will not be regarded in any way as prejudicing the Insured's or its own position and will not be an admission of the Insured's entitlement to indemnity.

The Insured irrevocably waives all claims to legal professional privilege between themselves and any solicitor retained by QBE to act on the Insured's behalf in relation to any Claim or Loss. The Insured will allow the solicitor to disclose to QBE and its reinsurers any information obtained in the course of his/her duties.

### 4. Insured's right to contest

If the Insured refuses to consent to any settlement recommended by QBE and elects to contest or continue any legal proceedings, QBE's liability will not exceed the amount for which the Claim or circumstance could have been settled, less any Excess, plus the Costs and Expenses incurred up to the date of such refusal.

### 5. Legal counsel

Neither QBE nor the Insured will require each other to contest any legal proceedings in respect of any Claim against the Insured, unless legal counsel (to be mutually agreed upon by the Insured and QBE, or in default of agreement, nominated by QBE) will recommend that such proceedings should be contested.

In formulating such recommendation, counsel will take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the Insured successfully defending the action. The cost of counsel's opinion will, for the purpose of this Policy, be regarded as part of the Costs and Expenses.

In the event that counsel recommends that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in counsel's opinion, are reasonable, then the Insured will not object to any such settlement and will cooperate with QBE to effect such settlement in accordance with this Policy, subject to Claims Condition 4 (Insured's Right to Contest).

### 6. Limit of indemnity

QBE's liability to indemnify the Insured under Insuring Clause 1 (Civil Liability) in respect of any one Valid Claim (including all legal costs and expenses for which the Insured will become legally liable to the claimant), or all such Valid Claims in the aggregate, will not exceed the Limit of indemnity.

## 7. Maximum costs and expenses

In no case whatsoever will QBE pay more than an amount equal to the Limit of Indemnity or NZD5,000,000 in the aggregate whichever is the lesser in respect of Costs and Expenses under Insuring Clause 2 (Costs and Expenses) or otherwise.

## 8. Notification of circumstances

If, during the Period of Insurance, the Insured notifies QBE of any circumstance which the Insured or a reasonable Insured should have considered may give rise to a Claim, and this circumstance later gives rise to a Claim first made against the Insured after expiry of the Period of Insurance, QBE will treat the Claim as first made against the Insured during the Period of Insurance. In this context, a 'circumstance' must be sufficiently specific that the Insured can and does provide to QBE details of name(s) of potential claimants and potential wrongful acts, errors or omissions.

If any Claim or circumstance notified under this Policy should have been notified to QBE earlier and QBE has been prejudiced by such late notification, the liability of QBE will be reduced to the amount for which QBE would have been liable had the notification been made at the correct time.

## 9. Other insurance

The Insured will immediately advise QBE of any other insurance or indemnity from which they are entitled to receive any benefit in respect of any notified Claim, circumstance or Loss.

This Policy will only cover the part of the loss which exceeds the amount of indemnity payable under such other insurance or indemnity, even if the other insurance or indemnity has a term to that effect. However, this will not apply if the other insurance or indemnity is a specific excess layer cover over this Policy.

## 10. Payment in excess of limit of indemnity

If any payment, settlement or judgment in excess of the Limit of Indemnity has to be made or paid to settle or dispose of any Claim, QBE's liability for Costs and Expenses is limited to such proportion as the Limit of Indemnity bears to the amount payable to dispose of the Claim.

Where QBE has paid or incurred Costs and Expenses in excess of its proportionate liability the Insured will upon demand from QBE pay to QBE the amount of that excess. QBE may offset any amount payable by the Insured against any amount that is payable by QBE.

## 11. Payment of indemnity

QBE may at any time pay the Limit of Indemnity applying to any one Claim, Loss or series of Claims or Losses (after deduction of sums already paid) or any lesser amount for which such Claims or Losses can be settled and will then be under no further liability in connection with such Claims or Losses except for its proportion of Costs and Expenses incurred prior to the date of payment.

## 12. Reporting and notice

Irrespective of the alleged or actual quantum, the Insured will give to QBE immediate notice in writing of:

- 12.1 any Claim or Loss; or
- 12.2 the receipt of notice from, or information as to any intention by any party to make a Claim; or
- 12.3 any circumstance of which the Insured becomes aware, and which the Insured or a reasonable Insured should consider may give rise to a Claim or Loss.

## 13. Subrogation

If any payment is made under the Policy in respect of a Claim or Loss, QBE is subrogated to all the Insured's rights of recovery in any way related to the Claim or Loss. The Insured will give all such assistance in the exercise of rights of recovery as QBE may reasonably require. Any such recovery will be applied first to QBE's defence costs incurred, regardless of how the recovery may be described in any settlement agreement between the Insured and the claimant. However, QBE will not exercise any subrogated rights of recovery against any Employee or partner of the Insured unless the Claim or Loss has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee or partner.

## General conditions

### 1. Audit work

QBE agrees to provide coverage in respect of any Claim made against the Insured arising from any auditing services that the Insured undertakes in respect of any Public Listed Companies or Financial Institutions. Provided that:

- 1.1 the Insured has given written notification to QBE prior to the date this work commences; and
- 1.2 the Insured has received QBE's written consent to providing this cover and has agreed to any amended terms that QBE may apply, such consent and terms to be at QBE's sole discretion.

If the Insured fails to comply with 1.1 and 1.2 above, any insurance under this Policy in respect of such auditing activities shall be voidable from the date work commenced.

### 2. Cancellation

- 2.1 The Insured may cancel this Policy at any time by giving notice to QBE. If prior to such cancellation:
  - 2.1.1 no Claim or circumstance has been notified under this Policy, QBE will refund to the Insured the amount of the unexpired premium already paid on a pro-rata basis, subject to any minimum premium applicable;
  - 2.1.2 there has been any Claim or circumstance notified under this Policy, any premium refund will be considered and determined by QBE at the time of cancellation.
- 2.2 QBE may cancel this Policy by sending at least thirty (30) days notice to the Insured at its last known address. QBE will refund the amount of any unexpired premium already paid on a pro-rata basis.

### 3. Dishonest statements

If the Insured or any person who is entitled to indemnity under this Policy makes any dishonest statement in respect of an application for indemnity under this Policy, this insurance will be voidable from the commencement of the Period of Insurance, and all benefits under this Policy will be forfeited. For the purpose of this condition, each of the Insured will be treated as having been issued with a separate policy.

### 4. Goods and services tax

Where, upon receiving any indemnity payment under this Policy, the Insured is liable to pay tax under section 5 (13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation in any other jurisdiction specified in the Schedule, QBE will indemnify the Insured for the amount of that tax. The indemnity under this clause is payable by QBE in addition to the Limit of Indemnity.

### 5. Policy interpretation

Interpretation of this insurance will be governed by the laws of New Zealand whose courts of law will have exclusive jurisdiction in any dispute that may arise.

Words referring to persons will include companies and other legal entities. The singular includes references to the plural and vice versa and any gender includes inference to all other genders.

### 6. Reference to legislation

Legislation referenced in this Policy includes Subsequent Legislation. Any term used in this Policy and defined by reference to legislation will have the meaning given in any replacement definition or definition with materially the same object or purpose in Subsequent Legislation.

For the purposes of this condition, 'Subsequent Legislation' means:

- 6.1 an Act or regulation as amended, replaced or re-enacted; and
- 6.2 where an Act or regulation has been repealed, the current equivalent Act or regulation with materially the same object or purpose whether in whole or in part.

### 7. Severability of partners

QBE will not avoid this Policy for the Insured's non-disclosure or misrepresentation of a material matter provided such non-disclosure or misrepresentation was not intended to mislead or deceive QBE and did not arise from the Insured's disregard to make proper enquiries of all partners and Employees prior to providing QBE with underwriting information.

The proposal will be construed as a separate proposal form individually submitted for each Insured. No state of mind or knowledge possessed by an Insured will be imputed to any other Insured for the purposes of determining entitlement to indemnity under this Policy.

### 8. Written notice

All notices, including notification of Claims or Losses, will be sent to QBE in writing via:

- 8.1 your insurance broker (email or letter); or
- 8.2 your QBE contact (email or letter).

QBE Insurance (Australia) Limited

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