

**Civil Liability – Miscellaneous Risks [09-21]**

Nova Underwriting Pty Ltd  
ACN 42 127 786 823 / AFSL 324767

**1.0 INSURING CLAUSES**

- 1.1** We will cover **You** for any **Claim**, first made against **You** and reported to **Us** during the **Insurance Period**, for civil liability arising from the conduct of the **Business** by **You**.
- 1.2** We will also cover **You** for the costs and expenses incurred in the defence, settlement or investigation of a **Claim** for which indemnity is available under Insuring Clause 1.1.

**2.0 AUTOMATIC PROVISIONS**

These provisions are included automatically and each is subject to the terms of the policy except where varied by the provision. Except for Automatic Provision 2.1, their inclusion does not increase the **Sum Insured**. The acts or omissions recorded in Automatic Provisions 2.2, 2.3, 2.4, 2.6, 2.7, 2.9 and 2.10 must occur in the conduct of the **Business**.

**ONE AUTOMATIC REINSTATEMENT**

- 2.1** While **Our** liability for any one **Claim** remains unchanged, **We** agree to reinstate the **Sum Insured** if it is either partially or totally exhausted by any payment(s) made by **Us** so that **You** will be covered for the **Sum Insured** for subsequent unrelated **Claims**, but the aggregate of all such reinstatements shall not exceed amount equal to the **Sum Insured**.

**LIBEL and SLANDER**

- 2.2** “civil liability” includes a liability arising from making a libellous or slanderous statement.

### **COMPETITION, CONSUMER and TRADE PRACTICES LEGISLATION**

- 2.3 “civil liability” includes a liability arising from a breach of any provision of any Australian or New Zealand trade practices or fair trading legislation, including the Competition and Consumer Act 2010.

### **DISHONESTY**

- 2.4 “civil liability” includes a liability arising from dishonest, fraudulent, criminal or malicious acts or omissions, but not if such acts or omissions cause loss of money, negotiable instruments, bearer bonds or coupons, bank or currency notes. No cover is provided under this provision to any person who commits or condones such acts or omissions.

### **OUTGOING PRINCIPALS/OTHERS**

- 2.5 “**You**” includes people who are no longer principals, partners, directors or employees of any party named in the Schedule against “NAME”.

### **LOSS OF DOCUMENTS**

- 2.6 “civil liability” includes a liability arising from **Your** obligation to pay for the cost of replacing or restoring **Documents** owned by others which have been lost, damaged or destroyed by **You**.

### **BREACH OF FIDUCIARY DUTY**

- 2.7 “civil liability” includes a liability arising from a breach of fiduciary duty owed to **Your** clients or customers.

### **ESTATES, SPOUSES and LEGAL REPRESENTATIVES**

- 2.8 Should **You** die or become incapable of managing **Your** affairs, “**You**” includes **Your** estate, spouse, heirs, legal personal representatives or assigns. **We** will only do this if such persons observe, and are subject to, the terms of this policy.

### **CONSULTANTS, SUB-CONTRACTORS AND AGENTS**

- 2.9 “civil liability” includes a liability arising from the conduct of the **Business** by **Your** consultants, sub-contractors and agents, providing **You** use reasonable endeavours to ensure that such parties maintain adequate professional indemnity insurance, and **You** preserve **Your** legal rights against them. No cover is provided for **Claims** made against such consultants, sub-contractors and agents.

### **INTELLECTUAL PROPERTY**

- 2.10 “civil liability” includes a liability arising from unintentional infringement of intellectual property rights, including copyright, patent, trademark, plagiarism, registered design and breach of confidentiality.

## **PRIOR ENTITY**

- 2.11** Definition 6.14 “**You**” includes corporate entities, other than entities contemplated by Optional Provision 3.2, through which the entity named in the Schedule previously traded.

## **INQUIRIES**

- 2.12** We will pay on **Your** behalf, all legal costs reasonably incurred in connection with **Your** attendance at any **Inquiry** at which **You** are required by law to appear. We will only do this if:

- the **Inquiry** is ordered or commissioned during the **Insurance Period**; and
- **Our** consent is obtained before such costs are incurred; and
- **You** notify **Us** before the **Insurance Period** expires that **You** are required to attend the **Inquiry**; and
- the **Inquiry** is not being held in the **USA or Canada**; and
- **Your** attendance is required because of **Your** involvement in the **Business**; and
- at **Our** option, **We** can nominate legal advisers to be used; and
- **Our** liability does not exceed \$100,000 for the **Insurance Period**.

## **SEVERABILITY AND NON-IMPUTATION**

- 2.13** If any person fails to:

- comply with their duty of disclosure, or
- makes a representation to **Us**, or
- fails to comply with a condition of this policy, then

We will not deny cover to any other person on these grounds if that other person was unaware of the matter not disclosed, the truth of the matter misrepresented, or did not breach the condition, as the case may be.

### 3.0 OPTIONAL PROVISIONS

The following provisions are optional and are not included unless recorded in the Schedule. Each provision is subject to the terms of this policy, except where varied by the provision. Their inclusion does not increase the **Sum Insured**.

#### JOINT VENTURE

- 3.1 “**Business**” includes any joint venture to which **You** are a party, but cover will be limited to a sum equivalent to **Your** proportion of liability as defined by the joint venture arrangement.

#### PREVIOUS BUSINESS

- 3.2 “**Business**” includes any similar business of which **You** were a principal, partner or director before joining the **Business** conducted by the party(ies) named in the Schedule against “**NAME**”. **We** will only do this if **You** are not entitled to cover under any insurance held by that similar business. **We** will not apply Exclusion 4.2.8 to **Claims** under this provision.

#### FIDELITY

- 3.3 Despite Exclusion 4.2.2 and Automatic Provision 2.4, **We** will cover **You** for loss of money, negotiable instruments, bearer bonds or coupons, or bank or currency notes, which belong to **You** or for which **You** are legally liable, where such loss caused by fraudulent or dishonest acts or omissions.

**We** only cover loss which:

- is discovered and reported to **Us** during the **Insurance Period**.
- occurs prior its discovery, and on or after the **Retroactive Date**.
- does not exceed the sum stated in the Schedule for Optional Provision 3.3 for the **Insurance Period**.

For the purposes of this Optional Provision, **You** does not include any person who committed or condoned the fraudulent or dishonest act or omission which caused the loss.

All claims under this Optional Provision are subject to the **Excess**.

## 4.0 EXCLUSIONS

### KNOWN CLAIMS/CIRCUMSTANCES

4.1 We will not cover **You** for any **Claim** , including the costs and expenses incurred in the defence, settlement or investigation of a **Claim**:

:

- first made, threatened or intimated against or to **You** prior to the **Insurance Period**; or
- arising from any matter disclosed or notified to **Us** or any other insurer prior to the **Insurance Period** as being either a **Claim**, or circumstances which might result in a **Claim**; or
- arising from any litigation or **Inquiry** that was in progress or pending prior to the **Insurance Period**; or
- arising from circumstances of which **You** were aware prior to the **Insurance Period** and which **You**, or a person in **Your** position, ought reasonably to have realised to be circumstances which might result in a **Claim**.

For the purposes only of Exclusion 4.1, **Claim** includes, but is not limited to:

- a **Claim** as defined at clause 6.2; or
- a demand for compensation or damages; or
- an assertion of a right or entitlement to compensation, damages or other legal relief; or
- an assertion, allegation or complaint of a breach of professional duty;
- an assertion, allegation or complaint of any act or omission causing or potentially causing loss or damage; or
- an intention to seek compensation, damages or other legal relief.

4.2 We will not cover **You** for any **Claim** , including the costs and expenses incurred in the defence, settlement or investigation of a **Claim**:

:

### DOCUMENTS

4.2.1 which arises from the loss or destruction of, or damage to, any **Document**, unless covered by Automatic Provision 2.6; or

## **DISHONESTY**

- 4.2.2** which arises from any dishonest, fraudulent, criminal or malicious act or omission where such act or omission is admitted or established by final adjudication, unless covered by Automatic Provision 2.4 or Optional Provision 3.3; or

## **CONTRACTUAL OBLIGATIONS**

- 4.2.3** which arises from any obligation assumed by **You** by way of warranty, guarantee, contract or indemnity unless such obligation would have existed independently of such assumption; or

## **USA/CANADA – JURISDICTION / TERRITORY**

- 4.2.4** brought in a court in **USA** or **Canada**, or any court exercising jurisdiction under any law of **USA** or **Canada**, or in any other court to enforce a judgement or order of those courts; or

- 4.2.5** which arises from an act, error or omission occurring in **USA** or **Canada**; or

## **NUCLEAR**

- 4.2.6** which arises from nuclear weapons materials, or radiation or contamination from any nuclear fuel or waste; or

## **PREVIOUS BUSINESS**

- 4.2.7** which arises from any business of which **You** were a principal, partner or director before joining the **Business** conducted by the party[ies] named in the Schedule against “NAME”, unless covered by Optional Provision 3.2; or

## **PRIOR ACTS**

- 4.2.8** which arises from an act, error or omission occurring prior to the **Retroactive Date**; or

## **ASBESTOS**

- 4.2.9** which arises from asbestos; or

## **RELATED PARTIES / EPL**

- 4.2.10** brought by, or arising from a breach of professional duty to, a **Related Party**; or

#### **TRADING / OTHER DEBT**

**4.2.11** in connection with any personal or trading debt, or any guarantee given for any debt, unless incurred in **Your** professional capacity as a receiver, manager liquidator, administrator or trustee and You do not have an indemnity from another party; or

#### **DIRECTORS and OFFICERS**

**4.2.12** which arises from **You** acting as a trustee, director, secretary or officer of a trust or body corporate, unless covered under Automatic Provision 2.2; or

#### **OWNER / OCCUPIERS LIABILITY**

**4.2.13** which arises from **Your** ownership or occupation of land or buildings; or

#### **EMPLOYER'S LIABILITY**

**4.2.14** which arises from **Your** liability as an employer, including **Claims** arising from physical injury, death, sickness, disease, mental illness or emotional distress of any employee of **Yours**, or damage to their property; or

#### **FEE RECOVERY**

**4.2.15** to refund, or for damages calculated by reference to, any fee or charge rendered or incurred by **You**; or

#### **VEHICLES / AIRCRAFT / MARINE CRAFT**

**4.2.16** which arises from **Your** liability as an owner or operator of any aircraft, marine craft or motor vehicle; or

#### **PROPERTY and INJURY**

**4.2.17** which arises from:

- physical loss of, damage to, or destruction of any tangible property including loss of use of tangible property; or
- bodily injury, sickness, disease or death of any person, except for mental injury or anguish, nervous shock or emotional distress unassociated with bodily injury or illness;

UNLESS directly arising from the performance of **Your** professional activities and duties.

## **FINES/PENALTIES**

- 4.3** We will not cover **You** for **Your** liability to pay fines, penalties or exemplary damages or any costs and expenses incurred in connection with any **Claim**, demand or other process seeking the payment of fines, penalties or exemplary damages.

## **4.4 WAR and TERRORISM**

We will not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with:

- 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, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- any act of terrorism. “Terrorism” includes an act involving the use or threat of force or violence by 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 committed for, or in connection with, political, religious, ideological, ethnic 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.

and regardless of any other cause or event contributing to such **Claim**, loss, liability, cost or expense.

We will also not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing or suppressing or in any way relating to any of the above acts or events.

The burden of proving that this exclusion does not apply shall be upon **You**.

## **4.5 RECOVERY RIGHTS**

**Our** liability under this policy is reduced to the extent by which **Our** subrogation rights against any other party have been impaired because of an agreement between **You** and that other party.



## CYBER EXCLUSION

### 4.6 This exclusion applies to this *except* for claims under the Loss of Documents extension:

We will not cover **You** for any **Claim**, including the costs and expenses incurred in the defence, settlement or investigation of a **Claim** arising from any liability or loss arising from any intrusion due to the failure or the circumvention of the security of **Your Computer System**, which results in any unauthorised access, unauthorised use, hacking, a denial of service attack, a denial of access, the receipt or transmission of a malicious code, malicious software, malicious email, ransomware, trojan or virus which causes the destruction, modification, corruption, damage, deletion or disclosure of **Data** [including data of a third party] stored on **Your Computer System**.

“**Computer Systems**” means any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the internet or internal network or that are connected through data storage or other peripheral devices which are owned, operated, controlled or leased by **You**. **Your Computer System** also includes:

- any **Third Party** computer or electronic device [including mobile phones, tablets or computers owned or controlled by an employee of **Yours**] used to access **Your Computer System** or **Data** contained therein, but only to the extent such computer or device is used for that purpose;
- any employee “Bring Your Own Device” used to access **Your Computer System** or **Data** contained therein, but only to the extent such device is used for that purpose; and
- any cloud service or other hosted computer resources, used by **You** and operated by a **Third Party** service provider under a written contract between such a **Third Party** service provider and **You**.

“**Data**” means any electronically stored digital or digitised information or media stored on **Your Computer System** or an **OSP's Computer System**.

“**Outside Service Provider [‘OSP’]**” means an entity which is not owned, operated or controlled by **You** that **You** have appointed to provide specified services [including webhosting, payment processing and IT security data collection, data processing, delegation of data processing, storage of data and/or deletion or destruction of data] which would otherwise be provided internally whether based on an express contractual agreement, but only to the extent of the provision of such services

**“Third Party”** means any entity or natural person; provided, however, **Third Party** does not mean:

- **You**;
- other entity or natural person having a direct or indirect financial interest or executive role in the operation of the **Business**.

In addition, **We** will not cover **You** for any **Claim**, including the costs and expenses incurred in the defence, settlement or investigation of a **Claim** arising from monetary loss sustained from **Social Engineering Fraud**.

**Social Engineering Fraud** means a misrepresentation of fact or an intentional, malicious, wilful or fraudulent act, undertaken by a third party that misleads **You** and directly results in **Your**, or that of **Your** customers, money or securities or other assets being transferred, disbursed, paid, delivered, altered, corrupted or lost.

## **SANCTIONS**

- 4.7** No **Security** shall be deemed to provide cover and no **Security** shall 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 that **Security** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

## **5.0 CONDITIONS**

### **REPORTING CLAIMS**

- 5.1** As soon as **You** can, and within the **Insurance Period**, **You** must give **Us** written notice of any **Claim**, and give **Us** such information and assistance as **We** consider necessary in connection with the **Claim**, including identification of any parties against whom **You** may have rights.

### **MANAGEMENT OF CLAIMS**

- 5.2** **You** must not admit liability for or settle any **Claim**, or incur any costs or expenses in connection with any **Claim**, without **Our** written consent.

**We** may assume conduct of the defence and settlement of any **Claim** and may appoint legal advisers for that purpose, but we will not force **You** to contest any **Claim** unless Counsel [agreed to by **You** and **Us**] advises that the **Claim** should be contested having regard to the economics and prospects of the defence of the **Claim**.

Legal advisers retained by **Us** to act on **Your** behalf are free to disclose to **Us** any information obtained while acting for **You** and **You** agree to waive any legal professional or client privilege to the extent that such privilege may have prevented such disclosure to **Us**.

**We** may allow **You** to conduct the defence of the **Claim** if **We** believe the **Claim** will not exceed the **Excess**. If **We** do this, **You** will be required to provide **Us** with regular progress reports and **We** reserve the right to take over conduct of the defence of the **Claim** at any time.

**We** may settle the **Claim** if **We** so choose upon such terms as **We** have been properly advised and, in doing so, may take into account the economics of the defence of the **Claim**.

### **LIMITED LIABILITY**

- 5.3** **Our** liability under this policy will not exceed in the aggregate, in respect of any one **Claim**, and for all **Claims**, the **Sum Insured**, EXCEPT THAT **We** will, in addition, pay the costs and expenses incurred under Insuring Clause 1.2, PROVIDED THAT, if a payment greater than the **Sum Insured** is required to dispose of a **Claim**, **Our** liability under Insuring Clause 1.2 will be limited to the proportion that the **Sum Insured** bears to the payment required to dispose of the **Claim**.

### **MULTIPLE CLAIMS**

- 5.4** For the purposes of determining the **Sum Insured** and the **Excess**, all **Claims** which arise from acts, errors, or omissions which are the same or related to each other will be regarded as one **Claim**.

### **EXCESS**

- 5.5** **You** must bear the amount of the **Excess** in respect of each **Claim** [or any claim **We** deem to be a **Claim**] covered by this policy. Where the **Excess** is described in the Schedule as “Costs Inclusive”, all external expenses incurred by **Us** in connection with the **Claim** will be borne by **You** up to the limit of the **Excess**.

### **CANCELLATION**

- 5.6** **You** may cancel this policy at any time by notifying **Us** in writing. **We** may also cancel this policy, but **We** can only do so in accordance with the law. In the event of cancellation, any refund of premium, and the amount of that refund, is at **Our** sole discretion.

## **SUBROGATION**

- 5.7** Where **We** have paid a **Claim** under this policy, **We** become entitled to any rights **You** may have against any party in relation to that **Claim** [subject to law]. **You** must assist **Us** [including giving evidence at any civil trial] and provide such information [including signed statements] as **We** reasonably require to exercise such rights.

## **HEADINGS**

- 5.8** Paragraph titles used in this policy are included for descriptive purposes only and do not form part of this policy for the purpose of its construction or interpretation.

## **GOVERNING LAW**

- 5.9** This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts [or a federal court] based in that state or territory.

## **CONSIDERATION**

- 5.10** The cover provided by **Us** under this policy is in consideration of the payment of the agreed premium.

## **VALIDITY**

- 5.11** To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

## **GENERAL INSURANCE CODE OF PRACTICE**

- 5.12** The Insurance Council of Australia Limited has developed the General Insurance Code of Practice [*Code*], which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry. Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)  
The Code Governance Committee [*CGC*] is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the CGC go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

## SERVICE OF SUIT

**5.13** The **Security** agrees that:

(i) if a dispute arises under this policy, this policy will be subject to Australian law and practice and the **Security** 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 **Security** 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 behalf of the **Security**;

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

In the event of a **Claim** arising under this policy immediate notice should be given to:

*Eugenia Martinez,  
Claims Manager,  
Nova Underwriting Pty Ltd.  
Email: eugenia@novaunderwriting.com.au  
Telephone: (02) 9226 7801*

## COMPLAINTS

**5.14** If **You** have any concerns, or wishes to make a complaint in relation to this policy, **Our** services, or **Your Claim**, please let **Us** know, and **We** will attempt to resolve **Your** concerns in accordance with **Our** Internal Dispute Resolution procedure. Please contact **Us** in the first instance:

*Eugenia Martinez,  
Nova Underwriting Pty Ltd.  
Email: eugenia@novaunderwriting.com.au  
Telephone: (02) 9226 7801  
Post: Suite 34, Level 7, 88 Pitt Street, Sydney NSW 2000.*

**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 the complaint to **Your** satisfaction, **We** will escalate the 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: idraustralia@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 the complaint to the Australian Financial Complaints Authority (AFCA), if the 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](mailto:info@afca.org.au)*

*Post: GPO Box 3 Melbourne VIC 3001*

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

The complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If the 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.

## 6.0 DEFINITIONS

- 6.1 Business** means: the business described in the Schedule against “BUSINESS”.
- 6.2 Claim** means: any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served upon **You**.
- 6.3 Documents** means: deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer records and electronically stored data. **Documents** does not mean: money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 6.4 Excess** means: the amount[s] shown in the Schedule against “EXCESS”.
- 6.5 Inquiry** means: any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate **Your** affairs, or the affairs of the **Business**.
- 6.6 Insurance Period** means: the period shown in the Schedule against “INSURANCE PERIOD”, unless terminated earlier.
- 6.7 Our[s]** means: pertaining to Nova Underwriting Pty Ltd on behalf of the **Security**.
- 6.8 Related Party** means: a party insured by this policy; or a party related to **You**, including entities which are part of the same group of entities as **You**; or any person who unsuccessfully sought employment with **You**, but only in relation to **Your** failure to employ them.

- 6.9 Retroactive Date** means: the date shown in the Schedule against “RETROACTIVE DATE”. If no date is shown, and the word “Unlimited” appears, then Exclusion 4.2.8 will not apply.
- 6.10 Security** means : certain Underwriters at Lloyd’s, each of whom [including their executors and administrators] is only liable for their share of any claim, loss, liability or expense payable by this policy. Details of each Syndicate and its share can be obtained from Nova Underwriting Pty Ltd. The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations.
- 6.11 Sum Insured** means: the amount shown in the Schedule against “SUM INSURED”.
- 6.12 Us and We** means: Nova Underwriting Pty Ltd on behalf the **Security**.
- 6.13 USA or Canada** means: the United States of America or the Dominion of Canada, and any dependency, protectorate, colony, state or territory of either country.
- 6.14 You** means:
- any party named in the Schedule against “NAME”; and
  - any person who is during the **Insurance Period** a principal, partner, director or employee of the above but only when acting on behalf of the **Business** conducted by the above.
- 6.15 Your[s]** means: pertaining to **You**.