Transaction liability

Private enterprise

Policy document
Australia

Policy certificate

Insurance effected through the Coverholder:
CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY.

This Certificate is issued by the Coverholder in accordance with the authorisation granted to the Coverholder under the Binding Authority Agreement with the Unique Market Reference stated within this Policy. This Policy comprises a Certificate, the Schedule, Wording and all other provisions and conditions attached and any endorsements issued.

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.

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 Policy.

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.

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.

In Witness whereof this Certificate has been signed by:

Authorised Official

Please examine this document carefully. If it does not meet your needs, please contact your broker immediately. In all communications the policy number appearing overleaf should be quoted.

SCHEDULE

POLICY NUMBER:	[•]
UNIQUE MARKET REFERENCES:	B087522C9N5049
NAMED INSURED:	[•]
THE UNDERWRITERS:	Underwritten by certain underwriters at Lloyd's
THE INCEPTION DATE:	16:00 Local Standard Time on [•]
THE EXPIRY DATE:	16:00 Local Standard Time on [•]
TOTAL PAYABLE:	AUD [•]
Premium:	AUD [•]
Policy Administration Fee:	AUD [•]
GST:	AUD [•]
ACQUISITION AGREEMENT:	The agreement for the sale of the **target** by the **seller** to the **buyer** dated on or around <<MONTH>>, [•] , as held on file.
BUYER:	[•]
SELLER:	[•]
TARGET:	[[•], located at [•]] / [The assets of [•] as described in the **acquisition agreement**.]
ENTERPRISE VALUE:	[•]
TERRITORIAL SCOPE:	Worldwide
CLAIMS MANAGERS:	CFC Underwriting Limited Please report all new claims to: newclaims@cfcunderwriting.com
INSURED OBLIGATIONS:	The representations and warranties in [•] of the **acquisition agreement**.
EXCLUDED OBLIGATIONS:	[•]
TAX INDEMNITY:	[•]
DECLARATIONS LETTER:	[•]
CHOICE OF LAW:	New South Wales
WORDING:	Transaction Liability Private Enterprise v2.0 (AUS)
ENDORSEMENTS:	[•]

LIMITS OF LIABILITY AND DEDUCTIBLES

INSURING CLAUSE 1: TRANSACTION LIABILITY PRIVATE ENTERPRISE

ALL SECTIONS COMBINED

Aggregate limit of liability:	AUD[●]	in the aggregate

SECTION A: BUYER'S CLAIMS

Aggregate limit of liability:	AUD[●]	in the aggregate, including **costs and expenses**
Deductible:	AUD[●]	in the aggregate. Applicable to **costs and expenses** only.

SECTION B: TAX INDEMNITY CLAIMS

Aggregate limit of liability:	AUD[●]	in the aggregate, including **costs and expenses**
Deductible:	AUD[●]	in the aggregate. Applicable to **costs and expenses** only.

PREAMBLE

IMPORTANT: It is important for **you** to review this Policy in its entirety carefully, including **CONDITION 1**. This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide. This Policy consists of and must be read together with the Schedule, any Endorsements, and any annexures that are attached.

Where **loss** resulting from a **breach** that arises out of a **cyber event** or **technology error** is otherwise covered under this Policy, then the **loss** will be payable, subject to all other terms, conditions and exclusions of this Policy.

The Sections of this Policy are identified by the blue lines across the page with white upper-case print, these are for information purposes only and do not form part of the cover given by this Policy. Terms in bold upper-case print are references to specific Insuring Clauses, Sections, or Conditions. Other terms in bold lower-case print are defined terms and have a special meaning as set forth in the Definitions section and elsewhere. Words stated in the singular will include the plural and vice versa.

In consideration of the **premium** and in reliance upon the information that **you** provided to **us** prior to the commencement of this insurance, **we** agree to provide the cover as set out below.

INSURING CLAUSE

INSURING CLAUSE 1: TRANSACTION LIABILITY PRIVATE ENTERPRISE

SECTION A: BUYER'S CLAIMS

We agree to pay on **your** behalf all **loss** which **you** become legally or contractually obliged to pay as a result of a **buyer's claim** first made against **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

SECTION B: TAX INDEMNITY CLAIMS

We agree to pay on **your** behalf all **loss** which **you** become legally or contractually obliged to pay as a result of a **tax indemnity claim** first made against **you** during the **period of the policy**.

We will also pay **costs and expenses** on **your** behalf.

HOW MUCH WE WILL PAY

The maximum amount payable by **us** will not exceed the **aggregate limit of liability**.

We will only pay for that part of all covered **loss** that exceeds the **basket**. However, if the **basket** is less than the **minimum allowable basket**, then **we** will only pay for that part of all **loss** that exceeds the **minimum allowable basket**.

The amount of **loss we** pay will be reduced by any amounts recoverable by **you**, the **target** or the **buyer**, including any tax benefit or any other credit, payment or recourse against any other insurance policy directly relating to the **claim** or **loss**.

We may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** (after deduction of any amounts already paid). Upon that payment being made **we** will relinquish the conduct and control of the **claim** and be under no further liability in connection with that **claim**.

YOUR DEDUCTIBLE

We will only be liable for that part of all **costs and expenses** that exceeds the **deductible**. **You** will reimburse **us** upon **our** request for that part of any **costs and expenses** which falls within the amount of the **deductible**.

DEFINITIONS

1. **"Acquisition agreement"** means

   the acquisition agreement stated in the Schedule, including all its respective appendices, exhibits, annexes and other attachments.

2. **"Actual knowledge"** means

   actual personal knowledge of a particular fact, matter, circumstance, event or condition, including any particular fact, matter, circumstance, event or condition disclosed, defined, referenced or referred to in the **insurance application** or in connection with this Policy.

   Where any **named insured** or **additional insured** is a corporate entity, corporation, trust or partnership, "**actual knowledge**", will refer to the actual personal knowledge of a particular fact, matter, circumstance, event or condition of the directors, partners or trustee of the relevant **named insured** or **additional insured** (as the case may be).

   "**Actual knowledge**" does not include any constructive, implied or imputed knowledge.

3. **"Additional insured"** means

   the entity or individual named as the **additional insured** in the Schedule.

4. **"Aggregate limit of liability"** means

   the maximum amount payable by **us** as stated in the Schedule, in respect of all claims under this Policy.

5. **"Basket"** means

   the monetary threshold amount of loss and damages that must be incurred before the **buyer** is entitled to any indemnification under the terms of the **acquisition agreement** in respect of the **insured obligations**.

6. **"Breach"** means

   any breach of or inaccuracy in, or matter giving rise to a claim under, the **insured obligations**.

7. **"Business days"** means

   any day other than a Saturday, Sunday or public holiday in the state of the address of the **named insured** as stated in the Schedule.

8. **"Buyer"** means

   the buyer stated in the Schedule, including its assigns, and successors.

9. **"Buyer's claim"** means

   a demand or legal action brought against **you** by the **buyer** for money as a result of an actual or alleged **breach**.

10. **"Claim"** means
    a. in respect of **INSURING CLAUSE 1** (**SECTION A** only), a **buyer's claim**; and
    b. in respect of **INSURING CLAUSE 1** (**SECTION B** only), a **tax indemnity claim**.

11. **"Claims managers"** means

    the claims managers stated in the Schedule.

12. **"Completion"** means

    the completion of the transaction in accordance with the terms and conditions of the **acquisition agreement**.

13. **"Computer systems"** means

    all electronic computers including operating systems, software, hardware, microcontrollers and all communication and open system networks and any data or websites wheresoever hosted, off-line media libraries and data back-ups and mobile devices including but not limited to smartphones, iPhones, tablets or personal digital assistants.

14. **"Costs and expenses"** means

reasonable and documented third party legal and professional expenses (including disbursements and applicable sales tax or other similar tax) reasonably incurred by **you** with **our** prior written agreement (which will not be unreasonably withheld, conditioned or delayed) in the investigation, settlement, defense or appeal of any **claim** as a direct result of a **breach**.

15. **"Cyber event"** means

any actual or suspected unauthorised access to or electronic attack designed to damage, destroy, corrupt, overload, circumvent or otherwise impair the functionality of any **computer systems**, including denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware) or computer virus.

"**Cyber event**" does not mean **technology error**.

16. **"Declarations letter"** means

the letter which is specified as the declarations letter in the Schedule and which is signed and executed by the **named insured** and dated on or around the **inception date**.

17. **"Deductible"** means

the amount stated as the deductible in the Schedule.

18. **"Discoverable intellectual property"** means

any:

a. patent, trade mark, copyright or mask work used by, licensed to, licensed by, or registered in the name of the **target** or its subsidiaries; or
b. pending application or registration of a. above;

which is:

a. the subject of or relates to any **insured obligation** or which will be conveyed, transferred, assigned or licensed as a result of the consummation of the transaction contemplated in the **acquisition agreement**; and
b. disclosed or referenced, as at the **effective date**, on the applicable registry of any patent, trade mark or copyright office.

19. **"Effective date"** means

the date upon which any of the **insured obligations** are given, or deemed to be given, by **you** to the **buyer** under the **acquisition agreement**.

20. **"Enterprise value"** means

the enterprise value stated in the Schedule.

21. **"Escrow agreement"** means

the agreement between:

a. **you**;
b. the **buyer**; and
c. the entity responsible for managing and regulating in accordance with the agreement, the total amount deposited by **you** in an account held in the entity's name on **your** behalf, including all interest, dividends, income, capital gains or other amounts earned or derived from the total amount deposited.

22. **"Excluded obligations"** means

a. any representation, warranty or indemnity contained in the **acquisition agreement** that is stated as an excluded obligation in the Schedule;
b. any **forward-looking obligation**; or
c. any representation, warranty or indemnity implied (including under statute) in connection with the transaction(s) contemplated in the **acquisition agreement** or a representation, warranty or indemnity that is not explicitly contained in the **acquisition agreement**.

23. **"Expiry date"** means

the expiry date stated in the Schedule.

24. **"Forward-looking obligation"** means

any statement, representation, warranty, indemnity or guarantee relating to the:

a. future performance of the **target**; or
b. outcome of a future event, fact, matter or circumstance;

including any estimate, projection or earn-out relating to a. or b. above.

25. **"Inception date"** means

the inception date stated in the Schedule.

26. **"Insurance application"** means

the application form, including any supplemental materials supplied by **you** or **your** insurance broker in support of the application for insurance.

27. **"Insured obligations"** means

the representations and warranties contained in the **acquisition agreement** given as at the **effective date** that are stated as insured obligations in the Schedule.

"**Insured obligations**" does not include any **excluded obligations** or any **forward-looking obligation**.

28. **"Loss"** means

    the actual damages **you** are legally or contractually obliged to pay arising from a **claim**.

29. **"Minimum allowable basket"** means

    an amount equal to 0.5% of the **enterprise value**.

30. **"Named insured"** means

    the entity or individual named as the named insured in the Schedule.

31. **"Period of the policy"** means

    the period between the **inception date** and the **expiry date**.

32. **"Pollutants"** means

    any solid, liquid, gaseous, radiological or thermal irritant, toxic or hazardous substance, or contaminant including, but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste materials, including recycled, reconditioned or reclaimed materials.

33. **"Premium"** means

    the amount stated as the premium in the Schedule.

34. **"Public authority"** means

    a formally established public or private organisation with the sole or principal objective of delivering a government or quasi-government service.

35. **"Searchable public registry"** means

    a repository of records and other information held by a **public authority** and searchable by the public, for a fee or otherwise, pertaining to any jurisdiction that **you** and the **target** are resident, incorporated, sell or buy products or provide services.

36. **"Target"** means

    the business, entity or assets stated as the **target** in the Schedule, including any entity that is controlled by the **target** and which will be transferred as a result of the transaction contemplated in the **acquisition agreement**.

37. **"Tax indemnity"** means

    the indemnity contained in the **acquisition agreement** relating to tax that is stated as the tax indemnity in the Schedule, other than any **excluded obligations**

38. **"Tax indemnity claim"** means

    any claim or matter giving rise to a claim under the **tax indemnity**.

39. **"Technology error"** means

any:

a. unintentional human error in entering, processing or amending electronic data within any **computer systems** or in the upgrading, maintenance or configuration of any **computer systems**; or
b. application bug, internal network failure, external network failure or hardware failure directly impacting any **computer systems** which renders them incapable of supporting their normal business function;

that does not arise directly or indirectly out of any **cyber event**.

40. **"We/our/us"** means

the underwriters stated in the Schedule.

41. **"You/your"** means

the **named insured** and any **additional insured**.

EXCLUSIONS

We will not make any payment under this Policy:

1. **Accounts receivable**

for any amounts arising out of or resulting from the failure or inability to collect or recover any accounts receivable of the **target**.

2. **Actual knowledge prior to the effective date**

arising out of a particular fact, matter, circumstance, event or condition of which **you** had **actual knowledge** before the relevant **effective date**.

3. **Adjustment provisions**

for any amounts adjustable, claimable, claimed, payable or paid in connection with any purchase price adjustment provisions in the **acquisition agreement**.

Without limitation for the purposes of this Exclusion, a “purchase price adjustment” includes adjustments to the **target's** working capital, indebtedness, cash and cash equivalents and transaction expenses for the period up to **completion**.

4. **Asbestos, PCBs and PFAS**

arising directly or indirectly out of any form of asbestos, polychlorinated biphenyls (PCBs) or perfluoroalkyl and polyfluoroalkyl substances (PFAS) by whatever chemical name designated, including materials or products containing these substances, or any actual or alleged existence of or exposure to these substances.

5. **Assignment of liabilities**

   arising directly or indirectly out of any failure to settle all amounts outstanding or to assign any liabilities of the **target** prior to **completion** in accordance with the **acquisition agreement**.

6. **Buyer's defense costs**

   for any costs or expenses incurred by a third party in connection with a **claim** unless such costs or expenses constitute part of a settlement, as agreed by **us**, or order of a court of competent jurisdiction.

7. **Condition of assets**

   arising directly or indirectly out of any amount attributable to wear and tear of assets, property, plant or equipment.

8. **COVID-Support**

   arising directly or indirectly out of the **target's** compliance with the laws, rules and regulations relating to any loan, grant, funds or financial support advanced, paid or rendered under, in connection with or underwritten by a local or state government of Australia, or the Commonwealth of Australia.

9. **Disclosures under the acquisition agreement**

   for any:

   a. **breach**; or
   b. fact, matter or circumstance which results in a **breach**;

   that has been disclosed under the **acquisition agreement**.

10. **Discoverable intellectual property**

    for any **breach** to the extent such **breach** would be reasonably apparent on the face of any search results in connection with **discoverable intellectual property** immediately prior to the **effective date**.

11. **Dishonest acts**

    arising directly or indirectly out of any of the following as determined by final adjudication, arbitral tribunal, or written admission:

    a. any dishonest or fraudulent act or omission committed by **you**;
    b. any act committed by **you** which employs any device, scheme or artifice to defraud; or
    c. any statement made by **you** which **you** had **actual knowledge** was untrue.

12. **Double recovery**

for any **loss** where such **loss** has already been paid under this Policy.

13. **Environmental remediation**

arising directly or indirectly out of any obligation, request, demand, order or statutory or regulatory requirement that the **target** test for, monitor, clean up, remove, contain, treat, neutralise, protect against or in any other way respond to the actual, alleged or threatened presence of **pollutants**.

14. **Known and disclosed matters**

arising directly or indirectly out of:

a. particular fact, matter, circumstance, event or condition of which **you** had **actual knowledge** before the **effective date**;
b. a disclosure made under the **acquisition agreement**; or
c. any disclosure in a **searchable public registry** on or before the **effective date**, regardless of whether **you** had **actual knowledge** of the disclosure or whether **you** or any third party searched any **searchable public registry**.

15. **Non-monetary relief**

for injunctive, equitable or other non-monetary relief.

16. **Other insurance**

for which **you**, the **target** or the **buyer** are entitled to indemnification under any other insurance except for:

a. any additional sum which is payable over and above the other insurance where that insurance has been declared to **us** in the **insurance application**; or
b. any contribution that **we** are obliged to make by law and that contribution will be in proportion to the indemnity available under the other insurance policies.

17. **Prior and pending litigation**

arising directly or indirectly out of:

a. any litigation, investigation or other proceeding that commenced or is pending on or before the **inception date**; or
b. the same, or substantially the same fact, circumstance, situation, event, transaction or any other matter which is the subject of or alleged in the litigation, investigation or other proceeding in a. above.

18. **Proportionate liability**

arising directly or indirectly out of any **loss** which would not have arisen but for the **target** contracting out of or disapplying:

a. the Civil Liability Act 2002 (NSW);
b. the Civil Liability Act 2002 (WA); or
c. the Civil Liability Act 2002 (Tas);

or any subsequent amendments to these Acts.

19. **Sanctions**

or will be deemed to provide any cover, to the extent that the provision of such payment or cover will expose **us** to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, Canada, the European Union, United Kingdom or United States of America.

20. **Specific indemnities**

for any **breach** which was disclosed:

a. under the **acquisition agreement**; or
b. in connection with the transactions contemplated in, and the diligence undertaken prior to, the consummation of the **acquisition agreement**;

and which was specifically indemnified under the **acquisition agreement**.

21. **Superannuation**

arising directly or indirectly out of any:

a. non-compliance with laws and regulations;
b. liability, fine, interest or penalty;

relating to any pension, defined benefit scheme, superannuation scheme, superannuation guarantee or similar scheme for the purpose of providing benefits on retirement or death.

22. **Tax relief, tax credit, tax assets or tax losses**

arising directly or indirectly out of the non-availability of the **target's** tax relief, tax credits, tax assets or tax losses.

23. **Uninsurable fines**

for fines, penalties, civil or criminal sanctions, and for multiple, punitive or exemplary damages, unless insurable by law.

CONDITIONS

1. **What you must do in the event of a claim**

If **you** become aware of any **claim**, **you** must:

a. notify the **claims managers** as soon as is reasonably practicable and follow their directions. This notification must be made no later than the end of any applicable extended reporting period;
b. not admit liability for or settle or make or promise any payment or incur any **costs and expenses** without **our** prior written agreement (which will not be unreasonably withheld);
c. provide **us** with all material information relating to the **claim** and **your** good faith estimate of the actual or expected **loss**, and continue to provide **us** with this information until the **claim** is settled. **You** must also permit **us** to attend any meetings between **you** and the **buyer** or, at **our** request, provide **us** with a copy of the subject matter of any meeting between **you** and the **buyer** that **we** do not attend;
d. permit **us** to review and take copies of **your** records relating to the **claim** and correspond with **your** representatives; and
e. provide **us** with any other information or assistance that **we** may reasonably request relating to the claim.

If due to an emergency, **our** written consent cannot reasonably be obtained prior to **costs and expenses** being incurred with respect to any **claim** under this Policy, **we** will give retrospective approval for those **costs and expenses** incurred up to an amount equal to 50% of the **deductible**, which will be part of and not in addition to the **aggregate limit of liability**.

2. **Acquisition agreement**

The **acquisition agreement** may not be amended without **our** prior written agreement (which will not be unreasonably withheld, delayed or conditioned).

3. **Agreement to pay claims (duty to defend)**

We have the right and duty to take control of and conduct in **your** name the investigation, settlement, or defence of any **claim**. Except as provided for in **CONDITION 4**, **we** will not have any duty to pay **costs and expenses** of any part of a **claim** that is not covered by this Policy.

We will endeavour to settle any **claim** through negotiation, mediation, or some other form of alternative dispute resolution.

We will not settle any **claim** without **your** consent. If **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept, **you** must then defend, investigate or settle the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability for any **claim** will not be more than the amount for which the **claim** could have been settled had **you** consented, plus any **costs and expenses** incurred prior to the date of **your** refusal.

4. **Allocation**

   In the event a **claim** includes both allegations, persons or matters that are covered under this Policy and allegations, persons or matters that are not covered under this Policy, then **you** and **we** will determine and agree a fair and reasonable allocation of the amounts payable under the **claim**, including **costs and expenses** and any judgment or settlement amounts.

   If **you** and **we** cannot agree a fair and reasonable allocation an independent expert will be appointed to determine the allocation. The cost of the independent expert will be paid for by **us**. The allocation determined by the independent expert will be based upon written submissions only and will be final and binding on all parties. The independent expert is to determine the fair and equitable allocation as an expert, not as an arbitrator. **You** and **we** will be entitled to make written submissions to the independent expert. The independent expert is to take account of the parties' submissions, but the independent expert is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgment and opinion.

5. **Assignment**

   The assignment of this Policy will not be valid except with **our** prior written agreement (which will not be unreasonably withheld).

6. **Cancellation**

   This Policy is non-cancellable other than in accordance with **CONDITION 7**.

7. **Conditions precedent to our liability**

   The following are conditions precedent to **our** liability under this Policy:

   a. **completion** having occurred;
   b. **our** receipt of the **declarations letter**, signed and executed by **you**; and
   c. payment of the **premium** within 30 **business days** of the **inception date**. Payment of the **premium** to **your** broker within 30 **business days** of the **inception date** will be deemed to be payment made to **us**.

   If any of a. to c. above are not met **we** reserve the right to cancel and void this Policy with effect from the **inception date**.

8. **Disclosure of the policy to a third party**

   You must not disclose this Policy (or any part thereof) or its existence to any third party without **our** prior written agreement, unless the disclosure is:

   a. required by any legal or regulatory provision; or
   b. to **your** professional advisers, the **buyer** or any relevant escrow agent, provided **your** professional advisers, the **buyer** or the escrow agent do not disclose the existence of this

Policy to any third party without **our** prior written agreement, except as required by any legal or regulatory provision.

In the event **you** must disclose this Policy as a part of discovery relating to any litigation of a **claim**, **you** must notify **us** of the disclosure as soon as is reasonably practicable.

9. **Escrow claims**

In respect of that part of any **loss** resulting from a **claim** that is subject to the **escrow agreement**, it is a condition precedent to **our** liability under this Policy that **you** have available to **you** and maintain, the right to contest, dispute or challenge the **claim**.

10. **Extended reporting period**

An extended reporting period of 15 days following the **expiry date** will be automatically granted at no additional **premium**. This extended reporting period will cover, subject to all other terms, conditions and exclusions of this Policy, any **claim** first made against **you** during the **period of the policy** and reported to **us** during this extended reporting period.

No **claim** will be accepted by **us** in this 15 day extended reporting period if **you** are entitled to indemnity under any other insurance, or would be entitled to indemnity under such insurance if its **aggregate limit of liability** was not exhausted.

11. **Insurance application warranty**

You agree that all statements made by **you** in the **insurance application** are **your** agreements and representations to **us** and the Policy is issued in reliance upon that information. The misrepresentation or non-disclosure of any matter by **you** or **your** agent will render this Policy null and void and relieve **us** from all liability under this Policy.

12. **Maintenance of records**

You must maintain all records relating to this Policy, the transaction and **acquisition agreement** until 90 **business days** following the settlement of all claims under this Policy or the resolution of all disputes.

13. **Our rights of recovery**

If **we** make any payment under this Policy and **you** have any right of recovery against a third party in respect of this payment, then **we** will maintain this right of recovery. **You** will do whatever is reasonably necessary to secure this right and will not do anything after the event which gave rise to the **claim** to prejudice this right.

We will not exercise any rights of recovery against any employee of **yours** or the **target**, unless this is in respect of any fraudulent or dishonest acts or omissions as proven by final adjudication, arbitral tribunal or written admission by the employee.

Any recoveries will be applied as follows:

a. towards any recovery expenses incurred by **us**;
b. then to **us** up to the amount of **our** payment under this Policy, including **costs and expenses**;
c. then to **you**.

14. **Payment of loss**

We confirm that **we** will pay any and all amounts payable by **us** to **you** under this Policy to such account as notified to **us** by any **named insured** or **additional insured** from time to time and **you** irrevocably agree and confirm that payment of such amounts due under this Policy to such account will constitute full discharge of **our** obligations solely in respect of and relating to such payment made by **us** to **you**.

15. **Your duty of disclosure**

You have a duty of disclosure under the Insurance Contracts Act 1984 (Cth). This means that before **you** enter into a contract of insurance with **us**, **you** have a duty to disclose to **us** every matter **you** know, or could reasonably be expected to know, that may affect **our** decision to insure **you** and on what terms.

You have this duty until **we** agree to insure **you** and before **you** renew, extend, vary or reinstate an insurance contract.

You do not need to tell **us** anything that reduces the risk **we** insure **you** for, is common knowledge, **we** know or should know as an insurer or **we** waive **your** duty to tell **us** about.

If **you** do not tell **us** anything **you** are required to, **we** may cancel **your** Policy by giving **you** 30 days written notice or reduce the amount payable by **us** of any claim **you** make under the Policy, or both. If **your** non-disclosure is fraudulent, **we** may refuse to pay any claim and treat the Policy as if it had not existed.

16. **Choice of law, jurisdiction and service of suit**

This Policy will be interpreted under, governed by and construed in all respects in accordance with the laws of the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts of the Commonwealth of Australia.

Any summonses, notices or process to be served upon **us** 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 and to enter an appearance on **our** behalf, and who is directed at **your** request to give a written undertaking to **you** that he will enter an appearance on **our** behalf.

OUR REGULATORY STATUS

CFC Underwriting Limited is authorized and regulated by the United Kingdom Financial Conduct Authority (FCA). CFC Underwriting Limited's Firm Reference Number at the FCA is 312848. These details may be checked by visiting the Financial Conduct Authority website at https://register.fca.org.uk/. Alternatively the Financial Conduct Authority may be contacted on +44 (0)20 7066 1000.

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our obligations to you in respect of insurance policies that we have underwritten on behalf of insurers. This depends on the type of business and the circumstances of the claim. In respect of general insurance business the FSCS will cover 90% of the claim, without any upper limit and for compulsory classes of insurance, the FSCS will cover 100% of the claim, without any upper limit. Further information about compensation scheme arrangements is available from the FSCS.

HOW TO COMPLAIN

This Policy does not comply with the Insurance Council of Australia's General Insurance Code of Practice.

We intend to provide an excellent service to you. However, we recognise that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive from us, please contact your insurance broker in the first instance, stating the nature of your complaint, the certificate and/or claim number.

Alternatively, you can contact us directly at enquiries@cfcunderwriting.com or please write to:

Chief Executive Officer
CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

If after taking this action you are still unhappy with the response it may be possible in certain circumstances for you to refer the matter to Lloyd's Australia Limited. The contact details are as follows:

Lloyd's Australia Limited
Suite 1603, Level 16
1 Macquarie Place
Sydney
NSW 2000

Telephone:	(02) 8298 0783
E-mail:	idaustralia@lloyds.com

Following receipt of your complaint, you will be advised whether your matter will be handled by Lloyd's Australia or the Lloyd's Complaints team in the UK. Your complaint will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of your complaint at least every 10 business days.

If you remain dissatisfied after Lloyd's Australia Limited has considered your complaint, you may have the right to refer your complaint to the Australian Financial Complaints Authority. Their contact details are as follows:

Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
Australia

Telephone:	1800 931 678
E-mail:	info@afca.org.au

You can find further details about the Australian Financial Complaints on their website: www.afca.org.au

If you remain dissatisfied after receiving the response, you may have the right to refer your complaint to the Financial Ombudsman Service (FOS). The contact details are as follows:

Financial Ombudsman Service
Exchange Tower
London
E14 9SR
United Kingdom

Telephone from outside the UK:	+44 20 7964 0500
Telephone from inside the UK:	0800 023 4 567
Fax:	+44 20 7964 1001

The Financial Ombudsman Service is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find more information on the FOS at www.financial-ombudsman.org.uk.

The existence of this complaints procedure does not affect any right of legal action you may have against CFC Underwriting Limited or Lloyd's as detailed in the Choice of law, jurisdiction and service of suit Condition on the last page of your policy.

DATA PROTECTION NOTICE

We collect and use relevant information about you to provide you with your insurance cover or the insurance cover that benefits you and to meet our legal obligations. Where you provide us or your agent or broker with details about other people, you must provide this notice to them.

The information we collect and use includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit. This information may include more sensitive details such as information about your health and any criminal convictions you may have.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose your personal information in connection with the insurance cover that we provide and to the extent required or permitted by law.

We will process individual insured's details, as well as any other personal information you provide to us in respect of your insurance cover, in accordance with our privacy notice and applicable data protection laws.

To enable us to use individual insured's details in accordance with applicable data protection laws, we need you to provide those individuals with certain information about how we will use their details in connection with your insurance cover.

You agree to provide to each individual insured this notice, on or before the date that the individual becomes an individual insured under your insurance cover or, if earlier, the date that you first provide information about the individual to us.

We are committed to using only the personal information we need to provide you with your insurance cover. To help us achieve this, you should only provide to us information about individual insureds that we ask for from time to time.

You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or request a copy of our full privacy notice, please contact us directly at enquiries@cfcunderwriting.com.

For more information about how we use your personal information please see our full privacy notice, which is available online on our website at:

http://www.cfcunderwriting.com/privacy

ENDORSEMENT

[**Delete as required**]

It is understood and agreed that the following **EXCLUSIONS** are added to this Policy:

<<Placeholder 1>>

<<Placeholder>>

The following **DEFINITION** is added:

"**[definition]**" means

<<Placeholder>>

SUBJECT OTHERWISE TO THE TERMS AND CONDITIONS OF THE POLICY

APPENDIX – DECLARATIONS LETTER SPECIMEN

CFC Underwriting Limited and certain underwriters at Lloyd's as stated in the Declarations page
C/- CFC Underwriting Limited
85 Gracechurch Street
London EC3V 0AA
United Kingdom

Declarations Letter for TLPE Policy No. [▪] (the "Policy")

Dear Sirs,

1. Definitions and interpretation

a) Capitalised terms have the same meaning as attributed to them in the Policy unless stated otherwise.

b) "Disclosed" means disclosed under the acquisition agreement or disclosed in the Insurance Application.

c) "Acknowledgements" means any of the acknowledgements set forth in paragraph 2 of this Declarations Letter and "Acknowledgement" means any of them as the context requires.

d) "Declarations" means the Declarations set forth in paragraph 3 of this Declarations Letter and "Declaration" means any of them as the context requires.

e) "Insureds" means the Named Insured(s) and Additional Insured(s) and "Insured" means any of them as the context requires.

f) Each of (i) the Acknowledgements and (ii) the Declarations are severable and distinct from the other Acknowledgements and Declarations respectively.

g) Where any Insured is a corporate entity or partnership, for the purposes of the Declarations, "Insured" shall refer to the directors or partners of the relevant Insured (as the case may be).

h) If at any time any of the Acknowledgements or Declarations are determined to be or have become invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Acknowledgements and / or Declarations shall not in any way be affected or impaired.

2. Acknowledgements

I hereby acknowledge, as of the Inception Date:-

a) I have read the Acquisition Agreement, the Insured Obligations and the Policy.

b) The Declarations in this Declarations Letter are required to be given under the terms and conditions of the Policy.

c) The Underwriters are relying on the Declarations in providing coverage under the Policy.

d) The Policy is being purchased by the Insureds with full knowledge and acceptance of the terms and conditions without any reliance on any representation, warranty, advice or other statement made by the Underwriters (or the Underwriter's respective representatives including CFC Underwriting Limited) in respect of any legal, tax or accounting implications or requirements in respect of the coverage provided by the Policy.

3. Declarations

I hereby declare, represent and warrant, as of the Inception Date the following:-

a) None of the Insureds have been charged with a felony which was settled or for which they were found guilty of by a court of competent jurisdiction.

b) None of the Insureds have any pending criminal charges against them or against an individual who has served in a senior finance role in the Target or the Seller in the past 24 months.

c) None of the Insureds are aware of any Breach or Loss which has not been Disclosed.

d) None of the Insureds are aware of any fact, matter or circumstance which is reasonably likely to result in a Breach or Loss other than such facts, matters or circumstances which have been Disclosed.

e) The information provided in the Insurance Application:

   (i) is to the best of my knowledge, true, correct and not misleading in any material respect;

   (ii) complies with the Insured's duty of disclosure under section 21 of the *Insurance Contracts Act (Cth)*;

f) , to the best of my Actual Knowledge, true, correct and not misleading in any material respect.

g) I nor to the best of my Actual Knowledge, any other Insured, has committed a Dishonest Act.

h) None of the Insureds are bankrupt nor have any of them been discharged from bankruptcy in the past 24 months.

i) None of the Insureds are insolvent.

j) The Target is not insolvent.

k) The Seller is not insolvent.

Name of Named Insured	**Signature of Named Insured**
Dated	**Position of Named Insured at Target**

Name of Named Insured	**Signature of Named Insured**
Dated	**Position of Named Insured at Target**

ANNEXURE – COPY OF SIGNED AND EXECUTED ACQUISITION AGREEMENT

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