

**Umbrella Defence Costs Insurance Policy**

**Important Notice** - Please note that this is a Claims Made policy. Accordingly, **Liberty** will only cover the **Insured** in respect of Claims which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. The **Insured** should carefully read all of this **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by this **Policy**. The **Insured** is advised to consult its insurance agent or broker to ensure a clear understanding of the **Insured's** rights and obligations under this **Policy**.



## Policy Schedule

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**Policy Number** XX-XX-SPC-0X-XXXXXX

**Named Insured**

**Address of Insured**

**Policy Period**  
From XX.XX.XXXX at 4.00pm local standard time  
To XX.XX.XXXX at 4.00pm local standard time

**Limit of Liability** \$XX,000,000

**Policy Wording** LIU AUS Umbrella Defence Costs Policy Wording (05-12)

**Endorsements**

**Primary Policy**

<b>Class of Insurance</b>	<b>Insurer</b>	<b>Policy No.</b>	<b>Limit</b>
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**Underlying Insurance**

<b>Class of Insurance</b>	<b>Insurer</b>	<b>Policy No.</b>	<b>Limit</b>
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**Additional Insurance**

This policy is valid only if this schedule is signed and dated below by a person authorised by **Liberty**.

Issued <day> <month> <year> in <office location>

Authorised by Liberty

## Excess of Loss Insurance

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In consideration of payment of the **Premium** by the **Insured**, and subject to all the provisions of this **Policy**, **Liberty** agrees as follows:

### 1. Insuring Clause

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**Liberty** agrees to indemnify the **Insured** for **Defence Costs** up to the **Limit of Liability** where any **Underlying Insurance** within the relevant class of insurance declines to pay or is prevented from paying **Defence Costs** due to a **Statutory Charge** over that **Underlying Insurance**.

### 2. Conditions

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#### 2.1 Provisions of the Primary Policy

This **Policy** is subject to the provisions of the relevant **Primary Policy** and the provisions of this **Policy**. In the event of a conflict between the provisions of a **Primary Policy** and the provisions of this **Policy**, the provisions of this **Policy** shall prevail.

#### 2.2 Alteration to this Policy

No alteration, change or amendment to any **Underlying Insurance** shall alter, change or amend this **Policy** unless expressly agreed to in writing by **Liberty**.

#### 2.3 Maintenance of Underlying Insurance

This **Policy** only provides cover if the **Underlying Insurance** is maintained in full force and effect during the currency of this **Policy**.

#### 2.4 Primary Retention

Where this **Policy** applies in place of the **Primary Policy** any self-insured retention, deductible or excess specified to apply under the **Primary Policy** shall also apply under this **Policy** unless it has already been paid under the **Primary Policy**.

#### 2.5 Limit of Liability

The **Limit of Liability** is the maximum amount payable in respect of a single **Statutory Charge** and all **Statutory Charges** during the **Policy Period**.

#### 2.6 Obligation to Notify

The **Insured** shall give immediate notice in writing to **Liberty** of any of the following events:

- (a) any **Underlying Insurance** is cancelled or avoided;
- (b) any notice (including notice of a claim) is given by the **Insured** to any insurer of the **Underlying Insurance**;
- (c) any additional premium is charged in respect of **Underlying Insurance**; or
- (d) the insurer of any of the **Underlying Insurance** denies indemnity or refuses or is unable to pay any amounts insured due to a **Statutory Charge** over such **Underlying Insurance**.

All notices must be in writing and properly addressed to **Liberty** at the following address:

The Claims Department  
Liberty International Underwriters  
Level 27, Gateway  
1 Macquarie Place NSW 2000  
Australia  
Telephone: +61 2 8298 5800  
Facsimile: +61 2 8298 5887  
Email: spcauclaims@libertyiu.com

## Excess of Loss Insurance

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### 2.7 Claim Participation

**Liberty** may, at its sole discretion, elect to participate in the investigation, settlement or defence of any claim made against an **Insured** which is covered under one or more of the **Underlying Insurance**.

### 2.8 Subrogation & Recoveries

If **Liberty** grants indemnity under this **Policy**, **Liberty** shall be subrogated to all rights of recovery of the **Insured** whether or not payment has in fact been made and whether or not the **Insured** has been fully compensated for their actual loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to, assignment of rights of recovery, giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party. Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

### 2.9 Confidentiality

The **Insured** shall not publish or disclose the existence of this **Policy** including details of the premium paid, except as required by law or where the **Insured** has obtained **Liberty's** written consent to do so.

### 2.10 Governing Law & Exclusive Jurisdiction

This **Policy** is governed by the law in force in the Australian State or Territory in which the **Policy** is issued. All matters arising from or relating to the construction or operation of the provisions of the **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of that State or Territory

### 2.11 Policy Interpretation & Construction

The headings in this **Policy** are for descriptive purposes only and do not form part of the **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or to Section 3 - Definitions.

### 2.12 Liberty Mutual AGM

Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (LMIC), a stock insurance company incorporated in Massachusetts USA. LMIC is an indirect subsidiary of Liberty Mutual Holding Company Inc. (LMHC), a Massachusetts USA mutual holding company. Notice is hereby given that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA.

This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com), by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

### 2.13 Electronic Communications

**Liberty** may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act 1984 (Cth) or otherwise.

### 3. Definitions

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In this **Policy**:

**3.1 Defence Costs** means:

- (a) reasonable and necessary costs and expenses incurred by **Liberty**, or by the **Insured** but only with **Liberty's** prior written consent (which shall not be unreasonably withheld) solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any covered claim under the **Primary Policy**; and
- (b) reasonable and necessary costs and expenses incurred by an **Insured** in preparing for and attending an administrative or regulatory proceeding, official investigation, inquiry or hearing into the affairs of the **Insured** which an **Insured** is required to attend if findings from such proceeding, investigation, inquiry or hearing could lead to a claim covered under the **Primary Policy** being made against the **Insured**.

**3.2 Insured** means the **Named Insured** specified in the **Schedule** and as otherwise defined in the **Primary Policy**.

**3.3 Liberty** means Liberty International Underwriters which is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A. (The liability of members is limited).

**3.4 Limit of Liability** means the amount specified in the **Schedule**.

**3.5 Policy** means this policy wording, any endorsements to it and the **Schedule**.

**3.6 Policy Period** means the period of time specified in the **Schedule** unless this **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.

**3.7 Premium** means the amount payable by the **Insured** for this **Policy** including any applicable charges as advised by **Liberty**.

**3.8 Primary Policy** means the policies specified in the **Schedule**.

**3.9 Proposal** means the proposal form and any other information submitted by the **Insured** in applying for this insurance.

**3.10 Schedule** means the schedule attached to this **Policy** and signed by a person authorised by **Liberty**.

**3.11 Statutory Charge** means a statutory charge asserted over the proceeds of the **Underlying Insurance** made pursuant to the Law Reform (Miscellaneous Provisions) Act 1946 (NSW) s6, Civil Law (Wrongs) Act 2002 (ACT) s206, Law Reform (Miscellaneous Provisions) Act (NT) ss26-29, Law Reform Act 1936 (NZ) s9 or any similar legislation, all as amended from time to time.

**3.12 Underlying Insurance** means the policies specified in the **Schedule**, including the **Primary Policy**.

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