



# Professional Indemnity Policy

## Architects

Policy Document.

**Allianz** 



# General Information

The General Information set out below is provided for your information only. It does not form part of the insurance contract with you, and is not part of the policy. Nothing contained in the General Information imposes contractual obligations on you, or creates contractual rights. These are contained in the policy and any endorsement.

## Claims Made

This policy operates on a 'claims made' basis. This means that the policy covers you for claims made against you during the period of insurance.

The policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the policy (if such a date is specified);
- claims made after the expiry of the period of cover even though the event giving rise to the claim may have occurred during the period of cover;
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- claims made, threatened or intimated against you prior to the commencement of the period of cover;
- facts or circumstances of which you first became aware prior to the period of cover, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this policy;
- claims arising out of circumstances noted on the proposal form for the current period of cover or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of cover, you may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of cover. Any such rights arise under the legislation only. The terms of the policy and the effect of the policy is that you are not covered for claims made against you after the expiry of the period of cover.

## General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry. It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their reputation for responding efficiently to their customers' needs.

### (a) Dispute resolution process

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within fifteen (15) working days.

If you would like to make a complaint or access our internal dispute resolution service please contact our nearest office and ask to speak to a dispute resolution specialist.

### (b) Contact for assistance or confirmation of cover

If you need to confirm any policy transaction or clarify any of the information contained in this policy document or if you have any other queries, please contact any of our offices or refer to our website at [www.allianz.com.au](http://www.allianz.com.au).

### (c) If this insurance has been issued through an insurance intermediary

If your policy has been arranged through our agent, or a broker who is acting under an agency arrangement such as a binder with us, then they are acting as our agent and not as your agent. They will tell you when this is the case.

If your policy has been arranged by a broker, other than a broker acting under such an agency arrangement with us, then the broker is acting as your agent.

Where this policy has been arranged through an intermediary a commission may be payable by us to them for arranging the insurance.

## Privacy

This document sets out how we use, collect and disclose personal information about you. It supplements any information about privacy in the insurance documentation we have provided or will provide to you. Further information is in our Privacy Policy available at [www.allianz.com.au](http://www.allianz.com.au)

At Allianz, our priority is to protect the privacy of your personal information. We do this by handling personal information in a responsible manner and in accordance with the Privacy Act 1988 (Cth).

## How We Collect Your Personal Information

We usually collect your personal information from you or your agents. We may also collect it from our agents and service providers; other insurers and insurance reference bureaus; people who are involved in a claim or assist us in investigating or processing claims, including third parties claiming under your policy, witnesses and medical practitioners; third parties who may be arranging insurance cover for a group that you are a part of; law enforcement, dispute resolution bodies and statutory and regulatory bodies; marketing lists and industry databases; and publicly available sources.

## Why We Collect Your Personal Information

We collect your personal information to enable us to provide our products and services, including to process and settle claims; offer our products and services and the products and services of our related companies, brokers, intermediaries and business partners that may interest you; and conduct market or customer research and to determine those products or services which may particularly suit you. You can choose not to receive product or service offerings from us or our related companies, brokers, intermediaries and/or our business partners by calling the Allianz Direct Marketing Privacy Service Line on 1300 360 529 EST 8am to 6pm Monday to Friday or going online to our website's Privacy section at [www.allianz.com.au](http://www.allianz.com.au)

## Who Do We Disclose Your Personal Information To?

We disclose your personal information to people who assist us in offering and providing our products and services, conducting market or customer research (including to determine those products or services which may particularly suit you), or in activities related to carrying on our insurance business, including insurers, insurance intermediaries, reinsurers, insurance reference bureaus, parties with whom we have a relationship or insurance scheme in place with them under which you purchased your policy (such as a financier or motor vehicle manufacturer and/or dealer) and others; to our intermediaries or business partners to enable them to offer their products and services to you; as required by law or government, law enforcement bodies or dispute resolution bodies.

## Disclosure Overseas

Your personal information may be disclosed to other companies in the Allianz Group, business partners, reinsurers and service providers that may be located in Australia or overseas.

The countries to which this information may be disclosed will vary from time to time but may include Canada, Germany, New Zealand and other countries in which the Allianz Group has a presence or engages subcontractors.

We regularly review the security of our systems that are used for sending personal information overseas. Any information we disclose to overseas recipients may only be used for the purposes of collection detailed above and system administration.

## Access to Your Personal Information and Complaints

You may ask for access to the personal information we hold about you and seek correction by calling 1300 360 529 EST 8am 6pm, Monday to Friday.

Our Privacy Policy contains details about how you may make a complaint about a breach of the privacy principles contained in the Privacy Act 1988 (Cth) and how we deal with complaints. Our Privacy Policy is available at [www.allianz.com.au](http://www.allianz.com.au).

## Telephone Call Recording

We may record incoming and/or outgoing telephone calls for training or verification purposes. If you require access to a recorded call, a copy or appropriate access will be provided by us where available. It should be noted that not all calls are recorded and therefore not all calls will be accessible upon request.

## Your Duty of Disclosure

Before you enter into a contract of insurance with us, you have a duty under the Insurance Contracts Act 1984 to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate the contract.

This duty of disclosure applies until the contract is entered into (or renewed, extended, varied or reinstated as applicable). We may provide further information on your duty prior to any renewal, extension, variation or reinstatement.

Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by us; or
- that is of common knowledge; or
- that we know or, in the ordinary course of our business as an insurer, ought to know; or
- as to which compliance with your duty is waived by us.

## Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the contract in respect of a claim, cancel the contract or both.

If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning.

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# Table of contents

## Professional Indemnity Policy

### Part 1 – What We Insure You For

1. Insuring Clause
2. Defence Costs
3. Limit of Indemnity
4. Deductible
5. Extent of Indemnity
6. Multiple Claims

### Part 2 – Automatic Extensions

7. Consultants, Sub-contractors and Agents
8. Continuous Cover
9. Insurance Preparation Costs
10. Court Attendance
11. Domestic Partners
12. Extended Notification Period
13. Estates and Legal Representatives
14. Former Subsidiary, Former Principals etc
15. Fraud and Dishonesty
16. Inquiry Costs
17. Joint Ventures
18. Loss of Documents
19. Mitigation Costs
20. Newly Acquired or Created Subsidiaries
21. Public Relations Expenses
22. Run-Off Cover Until Expiry of Period of Cover
23. Imputation
24. Breach of Contract
25. Pursuit Costs
26. Principals Indemnity

### Part 3 – Optional Extensions

27. Breach of Privacy: Response Costs and Fines and Penalties
28. Fidelity Insurance
29. Subsidiaries – Pre-Acquisition Liability
30. Joint Ventures
31. Previous Business

32. Run-off after Merger, Takeover or Sale
33. Incoming Continuous Cover
34. Workplace Statutory Liability Insurance
35. Collateral Warranties
36. Novated Contracts
37. Proportionate Liability Waiver

### Part 4 – Exclusions

38. Asbestos
39. Associated Persons or Entities
40. Assumed Duty or Obligation
41. Contractual Liability/Guarantee or Warranty
42. Fines and Penalties
43. Fraud and Dishonesty
44. Obligation to Employees
45. Radioactivity and Nuclear Risk
46. Prior Claims/Circumstances
47. Retroactive Date
48. Trading Debts
49. USA Jurisdiction
50. War and Terrorism
51. Cost Estimates
52. Insolvency
53. Insurance and Financial Advice
54. Manufacturing, Construction and Property Development
55. Use of Property
56. Personal Injury and Property Damage

### Part 5 – Claims Conditions

57. Notification
58. Co-operation
59. Mitigation
60. Our Consent
61. Defence and Settlement
62. Disputes
63. Election to Contest
64. Allocation

## **Part 6 – Other Conditions**

- 65. Assignment
- 66. Cancellation
- 67. Change of Control
- 68. Currency
- 69. GST
- 70. Plurals, Headings and Titles, Interpretation
- 71. Scope and Governing Law
- 72. Subrogation
- 73. Alteration to Risk

## **Part 7 – Definitions**

# Professional Indemnity Policy

We, Allianz Australia Insurance Limited, ABN 15 000 122 850, AFS Licence No. 234708 will provide insurance in accordance with the terms of the policy.

The policy wording, endorsements and the **schedule** shall be read together as one contract (the “policy”).

When reading this policy, please note that some words and phrases have defined meanings. The list of defined words and phrases is included in Part 7 of the policy. The defined words and phrases are highlighted in **blue**.

Headings are descriptive only and not defined terms.

## Part 1 – What We Insure You For

### 1. Insuring Clause

#### 1.1 General

We agree to indemnify **you** against all civil liability for **damages** and awards of claimants’ costs arising from any **claim** that:

- (a) arises from the provision by **you** or failure by **you** to provide **professional services**; and
- (b) is first made against **you** during the **period of cover**.

#### 1.2 The civil liability referred to in sub clause 1.1 includes, but is not restricted to civil liability arising out of:

- (a) any actual or alleged misleading or deceptive conduct at law or under the Competition and Consumer Act 2010 (Cth), Trade Practices Act 1974 (Cth), Australian Securities and Investments Commission Act 2001(Cth), Corporations Act 2001 (Cth) or any equivalent provisions in the State Fair Trading Acts, or their respective successor legislation;
- (b) defamation, slander or libel;
- (c) any breach of intellectual or industrial property or trade secret whether registered or unregistered, including but not limited to trade marks, designs, patents and copyright;
- (d) breach of privacy or duty of confidentiality.

### 2. Defence Costs

#### 2.1 General

We agree to pay any **defence costs**:

- (a) that **we** incur; or
- (b) that **you** incur with **our** written consent.

#### 2.2 Advancement of **defence costs**

We will advance **defence costs** covered by this policy promptly after detailed invoices for those costs are received by **us**. However, any **defence costs** that are actually paid shall be repayable to **us** by **you** in the event and to the extent that it is determined under the policy that **you** were not entitled to a payment of **defence costs**.

Exclusion 43 ‘Fraud and Dishonesty’ will not apply until the conduct is established by final adjudication of a judicial or arbitral tribunal or by a written admission by **you**.

### 3. Limit of Indemnity

#### 3.1 General

We are only liable to indemnify **you** for an amount or amounts no greater than the **limit of indemnity** for any one **claim** as stated in the **schedule**.

#### 3.2 **Defence costs** are payable in addition to the **limit of indemnity**. However, the maximum amount payable by **us** under this policy in respect of **defence costs** is the equivalent of the **limit of indemnity**.

#### 3.3 In the event that the amount paid by **you** or on **your** behalf to dispose of a **claim** exceeds the policy’s **limit of indemnity** for any one **claim**, then this policy shall only cover the same proportion of **defence costs** as this policy’s **limit of indemnity** for any one **claim** bears to the total amount paid to dispose of the **claim** (exclusive of **defence costs**).

If **we** have paid or advanced **defence costs** in excess of this proportion, **you** must reimburse **us** for such **defence costs**.

#### 3.4 Where **we** consider that the **limit of indemnity** is likely to be exhausted by the payment of amounts payable under this policy **we** may, in **our** absolute discretion, elect to pay **you** the amount which exhausts the **limit of indemnity**. If **we** elect to do this, **we** shall have no further obligation to pay any further **defence costs**.

#### 3.5 Where a **claim** is made against more than one insured person or entity under this policy, this shall not operate to increase the total amount payable by **us** under this policy.

#### 3.6 Unless otherwise stated in the policy:

- (i) all amounts payable by **us** under this policy shall be inclusive of the **limit of indemnity** any one **claim** and not in addition to the **limit of indemnity** any one **claim**;
- (ii) all amounts paid by **us** under this policy shall erode the **limit of indemnity** in the aggregate.

- (iii) all sublimits of indemnity, where provided in the policy, are inclusive of the **limit of indemnity** any one **claim** and not in addition to the **limit of indemnity** any one claim;
- (iv) if the **schedule** provides for a **limit of indemnity** that is higher in the aggregate than for any one **claim**, then references in this policy to the **limit of indemnity** shall only be in respect of the **limit of indemnity** for any one **claim**.

#### 4. Deductible

Unless otherwise stated in the policy:

- (a) **we** will be liable only for amounts payable under the policy which exceed the **deductible**;
- (b) the **deductible** is not part of the **limit of indemnity**;
- (c) the **deductible** is to be borne by the insured and is to remain uninsured;
- (d) the **deductible** applies to all amounts payable under the policy, except where the **deductible** is expressed in the **schedule** as 'exclusive of costs';
- (e) if the **deductible** is expressed in the **schedule** as 'exclusive of costs' then:
  - (i) **you** must bear all **defence costs** up to the limit of the **deductible** if the **claim** made against **you** is for an amount that is less than the **deductible**;
  - (ii) otherwise the **deductible** shall not apply to **defence costs** payable under the policy;
- (f) any costs and expenses that **we** incur to determine whether **we** are liable to indemnify **you** under this policy are not subject to the **deductible**;
- (g) a single **deductible** shall apply to each **claim** or each cover provided by an Extension.

#### 5. Extent of Indemnity

##### 5.1 Extensions

**Our** liability to indemnify **you** is extended by:

- (a) the automatic extensions set out in Part 2 of this policy unless specifically excluded in the **schedule**; and
- (b) any optional extensions set out in Part 3 of this policy that are specifically included in the **schedule**; and
- (c) any extensions incorporated by endorsement to this policy.

##### 5.2 Exclusions and Conditions

However, unless expressly provided otherwise, **our** liability to indemnify **you** under this policy and any endorsement is subject to:

- (a) the **limit of indemnity** and **deductible** set out in clauses 3 and 4 of this policy; and
- (b) the exclusions from liability set out in Part 4 of this policy; and
- (c) the claims conditions set out in Part 5 of this policy; and
- (d) the other conditions set out in Part 6 of this policy; and
- (e) any exclusions, conditions or other provisions incorporated by endorsement to this policy.

#### 6. Multiple Claims

- (a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this policy.
- (b) Where a single act, error or omission gives rise to more than one **claim**, all such claims shall jointly constitute one **claim** under this policy.

## Part 2 – Automatic Extensions

### 7. Consultants, Sub-Contractors and Agents

We agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **period of cover**, arising from the provision of or failure to provide **professional services** by any consultant, sub-contractor or agent for which **you** are legally liable.

We will also indemnify any such consultant, subcontractor or agent, provided that the relevant act, error or omission giving rise to the **claim** occurred:

- (a) in the course of the conduct by the consultant, sub-contractor or agent of **your professional services** whilst acting for **you** or on **your** behalf; and
- (b) at the time when the consultant, sub-contractor or agent was under **your** direct control and supervision.

### 8. Continuous Cover

We agree to indemnify **you** against civil liability arising from any **claim** that arises out of facts which first became known to **you** prior to the **period of cover** where:

- (a) **we** were **your** professional indemnity insurer at the time the facts first became known to **you** (the "previous policy period") and have continued to be **your** professional indemnity insurer from then until the actual date of notification of **claim**; and
- (b) but for **your** failure to notify **us** of the facts during the previous policy period, **you** would have been entitled to indemnity under a previous policy issued by **us**; and
- (c) but for the Exclusion 46 'Prior Claims/Circumstances' **you** would be entitled to indemnity under this policy; and
- (d) **you** have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

We are only liable to indemnify **you** to the extent that **we** are obliged to indemnify **you** under the terms and conditions of the policy in effect during the previous policy period, but in no circumstances shall the cover granted by this Extension be greater than the terms and conditions of the policy in effect during this **period of cover** (including the **limit of indemnity** and **deductible**).

### 9. Insurance Preparation Costs

We will pay up to \$25,000 in the aggregate during the **period of cover** for reasonable professional fees and such other external expenses incurred by **you** in connection with the preparation of any insurance information or similar material at **our** request concerning a matter **you** have notified to **us** under this policy but only where that matter is indemnified by **us** under this policy.

The cover provided under this extension operates in addition to the **limit of indemnity** any one **claim** and does not erode the aggregate **limit of indemnity**.

### 10. Court Attendance

We will pay the **insured** \$500 per person for each day that an **officer** or **employee** is legally compelled to and does attend court to give evidence in connection with a **claim**. The **deductible** does not apply to this Extension.

### 11. Domestic Partners

The definition of **you** is extended to include any spouse or civil partner of an **officer** or **employee** in respect of a **claim** arising from the conduct of such **officer** or **employee** only and in which the spouse or partner had no involvement and is due solely to the spouse or civil partner's status as such.

### 12. Extended Notification Period

- 12.1 If this policy is neither renewed nor replaced with professional indemnity insurance at expiry of the **period of cover**, then **you** have until the earlier of:
  - (a) such time that **you** effect another professional indemnity insurance policy; or
  - (b) a period of sixty (60) days commencing on the day immediately following expiry of the **period of cover**;during which to notify **us** in writing of any **claim** first made against **you**.

- 12.2 The extension of cover under clause 12.1 is subject to each of the following conditions being satisfied:
  - (a) **we** will treat the **claim** as if it had been made against **you** and notified to **us** during the **period of cover**;
  - (b) coverage afforded hereunder does not reinstate or increase the **limit of indemnity** or extend the **period of cover**; and
  - (c) coverage afforded hereunder will only apply to acts, errors or omissions committed or alleged to have been committed by **you**:
    - (i) before the end of the **period of cover**; and
    - (ii) after the retroactive date specified in the **schedule**.

### 13. Estates and Legal Representatives

The definition of **you** is extended to include **your** legal representatives, heirs, assigns or estates in the event of **your** death, incapacity, insolvency or bankruptcy but only to the extent that **we** would otherwise have been liable to indemnify **you**.

## 14. Former Subsidiary, Former Principals, etc

- 14.1 The definition of **subsidiary** is extended to include any former **subsidiary**, but only in respect of the former **subsidiary's** conduct while it was still **your subsidiary**.
- 14.2 The definition of **you** is extended to include any former principal, **officer** or **employee**, but only in respect of their conduct while they were still **your** principal, **officer** or **employee**.

## 15. Fraud and Dishonesty

**We** agree to indemnify **you** against civil liability arising from any **claim** that is first made against **you** during the **period of cover**, in respect of any dishonest, fraudulent, malicious or reckless act or omission committed or alleged to have been committed by any other person or entity covered by this policy in the conduct of **your professional services**.

**We** will not provide indemnity under this Extension:

- (a) to any **insured** person or entity committing or condoning the act, omission or breach that would otherwise have resulted in Exclusion 43 'Fraud and Dishonesty' applying;
- (b) for any loss of **currency**.

## 16. Inquiry Costs

**We** agree to indemnify **you** for **inquiry costs** up to an amount not exceeding \$500,000 in the aggregate for the **period of cover**, which shall be part of and not in addition to the **limit of indemnity**.

## 17. Joint Ventures

**We** agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs arising from any **claim** first made against **you** during the **period of cover**, in respect of the provision of or failure to provide **professional services** by any joint venture of which **you** are a part, provided however that:

- (a) this Extension shall indemnify **you** for **your** individual civil liability in respect of such joint venture, but not for **your** joint civil liability; and
- (b) **we** shall not be liable to pay a contribution to any insurer of any other participant in such joint venture.

## 18. Loss of Documents

### 18.1 General

**We** agree to indemnify **you** against costs and expenses that **you** incur in replacing or restoring lost documents for which **you** are legally responsible where **you** first discover the loss during the **period of cover**. However, **we** are only liable to indemnify **you** against those costs and expenses for which **you** provide **us** with bills or accounts that are approved under sub clause 18.3.

### 18.2 Your obligation to notify us

**You** must notify **us** of the loss of documents as soon as practicable after **you** discover the loss and in any event within 30 days.

### 18.3 Approval of bills or accounts

Once **you** provide **us** with bills or accounts, **we** may either:

- (a) indemnify **you**; or
- (b) nominate a competent person to review the bills or accounts.

If **we** nominate a competent person, **you** must notify **us** whether or not **you** approve of **our** nominee.

### 18.4 Deductible

Notwithstanding clause 4, **you** do not have to bear the **deductible** in respect of costs and expenses covered by this clause.

### 18.5 Meaning of 'lost documents'

For purposes of this clause, 'lost documents' means documents that have been destroyed, damaged or mislaid and cannot be found after diligent search.

## 19. Mitigation Costs

### 19.1 **We** agree to indemnify **you** against **mitigation costs**.

### 19.2 **We** are only liable to indemnify **you** under clause 19.1 if:

- (a) **you** were first aware during the **period of cover** of the facts, circumstances, acts or omissions which have given rise to the **mitigation costs** (and which would have given rise to a claim but for the **mitigation costs**); and
- (b) **we** are notified within 15 days of **your** decision to incur **mitigation costs**; and
- (c) **you** establish to **our** reasonable satisfaction that there is a probability that:
  - (i) a **claim** would have been made against **you** and that **you** would have been liable for that **claim** in the absence of **your** carrying out the mitigation or rectification the subject of the **mitigation costs**; and
  - (ii) the amount of **your** liability for the **claim** would have been greater than the **mitigation costs**.

### 19.3 Cover for **mitigation costs** shall not exceed 10% of the **limit of indemnity** any one **claim**.

## 20. Newly Acquired or Created Subsidiaries

**We** agree to indemnify any **subsidiary** that **you** acquire or create during the **period of cover** against civil liability for **damages** and awards of claimants' costs arising from any **claim** first made against the **subsidiary** up to the earlier of:

- (i) sixty (60) days after such acquisition or creation; or
- (ii) the expiry of the **period of cover**;

in respect of the provision of or failure to provide **professional services**.

This Extension will only apply in respect of **claims** against the **subsidiary** arising from an act, error or omission occurring subsequent to the date of **your** acquisition or creation of the **subsidiary**.

For the purposes of this Extension, the definition of **subsidiary** is extended to mean any entity that for the first time during the **period of cover**, the **insured** either directly or indirectly:

- (a) controls the composition of the board of directors;
- (b) controls more than half of the voting power; or
- (c) holds more than half of the issued share capital.

Should the **insured** require the policy to be extended to include cover for **subsidiaries** which is not automatically provided by this Extension, then the **insured** shall provide **us** with any additional information requested by **us** to permit **us** to evaluate the acceptability of the additional exposure. **We** shall have the right, but not the obligation, to offer cover for the acquired or created **subsidiary** on such additional terms, conditions, exclusions and additional premium as **we** may require.

## 21. Public Relations Expenses

**We** will pay to **you** or on **your** behalf all **public relations expenses**.

Cover under this Extension shall not exceed \$50,000 in the aggregate for the **period of cover**.

## 22. Run-Off Cover Until Expiry of Period of Cover

**We** agree that in the event that **you** cease to exist or operate or become consolidated with, merged into or acquired by any other entity either before or during the **period of cover**, then the coverage provided under this policy with respect to such person or entity shall continue until the expiry date of the **period of cover**.

This Extension only applies in respect of **claims** arising from any act, error or omission occurring prior to the effective date that **you** ceased to exist or operate or were consolidated with, merged into or acquired by another entity.

## 23. Imputation

Where more than one person or entity is insured under this policy:

- (a) failure by an insured person or entity to comply with the duty of disclosure under the Insurance Contracts Act 1984 (C'wealth); or
- (b) misrepresentation by an insured person or entity to **us** before the policy commences; or

- (c) failure by an insured person or entity to comply with any terms or conditions of this policy,

does not prejudice the right of any other insured person or entity to indemnity under this policy. However, this clause only applies if:

- (i) the other insured person or entity is innocent of, and has no knowledge of, such conduct; and
- (ii) as soon as practicable after becoming aware of the conduct, they notify **us** of all facts relating to such conduct.

## 24. Breach of Contract

**We** agree to indemnify **you** against all civil liability for damages and awards of claimants' costs in respect of any **claim** first made against **you** during the **period of cover** in respect of a breach or an alleged breach of contract in **your** provision of or failure to provide **professional services**.

## 25. Pursuit Costs

**We** agree to pay, in respect of an insured event of which **you** first became aware during the **period of cover**, any pursuit costs that **you** incur with **our** written consent.

### 25.1 Definitions

For the purposes of this Extension only:

- (i) pursuit costs means reasonable external legal costs, charges, fees (including legal counsels fees and experts fees) and expenses necessarily incurred in pursuit of an insured event. This does not include **your** own first party and/or professional costs involved in the pursuit of an **insured event**, such as preparation of evidence, attendance at court hearings, professional time costs and the like;
- (ii) insured event means an action for recovery of **professional fees** or other amounts due to **you** under a contract entered into by **you** to provide **professional services** where such professional fees or amounts exceed \$20,000;
  - (a) the prosecution of a cause of action arising out of the ownership or possession of any real property by **you** in the provision of **professional services**. However, this does not include any disputes or cause of action relating to or arising out of any rental agreements.

### 25.2 Scope of Indemnity

**Our** liability to indemnify **you** under this Extension is subject to the following:

- (i) **we** are only liable to indemnify **you** for pursuit costs once **you** have instituted legal proceedings; and

- (ii) **we** have received legal advice, at **your** cost, that **you** have reasonable prospect of success in the pursuit of an insured event. If **we** agree to pay pursuit costs and, during the conduct of the litigation, **we** receive legal advice that the insured event can no longer be pursued with reasonable prospects of success, **we** will not be liable for any further pursuit costs from the date of such legal advice; and
- (iii) **we** are not liable to indemnify **you** for pursuit costs in respect of an insured event where **you** first became aware a cause of action more than 12 months prior to the inception of the **period of cover**.

### 25.3 Sublimit of Indemnity

**We** are only liable to indemnify **you** under this Extension for pursuit costs up to an amount not exceeding:

- (i) \$100,000 in respect of an insured event; or
- (ii) 75% of your pursuit costs; or
- (iii) 25% of the outstanding amount due under contract;

whichever is the lesser.

However, **we** are only liable to indemnify **you** for an amount not exceeding \$100,000 in the aggregate during the **period of cover**.

### 25.4 Deductible

**You** must pay all pursuit costs up to an amount of \$2,000 before **we** are liable to indemnify **you** under this Extension.

### 25.5 Additional exclusions applicable to this Extension

**We** are not liable to indemnify **you** in respect of pursuit costs directly or indirectly based upon, attributable to, or in consequence of:

- (i) the payment or failure to pay any tax imposed or charge levied by, or entitled to be levied by, any Government or statutory authority, or pursuant to any statute; or
- (ii) the transit by sea or air of any goods or property of any kind; or
- (iii) pollution, seepage or contamination of whatever nature caused by or allegedly caused by **you**; or
- (iv) **you** acting in collusion with any other person or entity; or
- (v) any pursuit costs incurred without **our** prior written approval; or

- (vi) any matter, cause of action or right of entitlement which is the subject of any compulsory third party motor insurance or accident compensation scheme or workers compensation of workers accident scheme; or
- (vii) **you** acting as a director, or holding any other position or office in a corporation; or
- (viii) any matter, cause of action or right of entitlement in relation to the death or bodily injury of any person or the contraction, acceleration or aggravation of any disease by any person; or
- (ix) the payment of any fine, penalty, compensation or damages of any kind.

## 26. Principals Indemnity

**We** agree to indemnify any principal where **you** are obligated by virtue of a written contract for the provision of **professional services** to that principal to provide insurance as is afforded by this policy, for any **claim** first made during the **period of cover** against the principal for its civil liability arising vicariously from **your** performance of **professional services** for the principal.

The indemnity provided by this Extension is subject to the following:

- (a) indemnity is provided only to the extent required by such contract and subject to the terms and conditions of this policy; and
- (b) if the **claim** had been first made against **you**, **you** would have been entitled to indemnity under this policy; and
- (c) **we** shall maintain the conduct and control of any **claim** for which the principal seeks indemnity under this policy; and
- (d) the indemnity does not apply to the principal's own acts, errors or omissions.

For the purposes of this Extension, 'principal' means the owner or proprietor of a construction project, provided that:

- (i) the principal has no involvement in the design, construction, management or supervision of the project; and
- (ii) **you** have entered into a written agreement to provide **professional services** to the principal.

## Part 3 – Optional Extensions

### 27. Breach of Privacy: Response Costs and Fines and Penalties

27.1 **We** will pay the reasonable and necessary response costs incurred by **you**, with **our** prior consent, to notify any client, third party or regulator in accordance with **your** legal or regulatory duties as a result of any actual, alleged or suspected breach of privacy first discovered by **you** and notified to **us** during the **period of cover** in relation to personal data collected during the provision of **professional services**, regardless of whether a **claim** has been made against **you**.

27.2 For the purposes of sub clause 27.1, such response costs shall not include:

- (a) **public relations expenses**;
- (b) wages, overtime, salaries or fees to **officers** or **employees**;
- (c) cost to comply with any injunctive relief.

27.3 Notwithstanding Exclusion 42 'Fines and Penalties', **we** will also pay fines and penalties payable by **you** arising from such actual, alleged or suspected breach of privacy under the *Privacy Act 1988 (Cth)* amendments thereto or similar legislation.

27.4 For the purposes of sub clause 27.3, **we** will not be liable to indemnify **you** for any such fine or penalty:

- (a) for which **we** are legally prohibited from indemnifying **you** under any law;
- (b) based upon, attributable to or in consequence of any recklessness or any wilful, intentional or deliberate failure to comply with any lawful notice or direction, enforcement action or proceeding under any legislation.

27.5 Cover under this Extension 27 shall not exceed \$100,000 in the aggregate for the **period of cover**.

### 28. Fidelity Insurance

**We** will indemnify the **insured** for **direct financial loss discovered** and notified to **us** during the **period of cover** resulting from any dishonest, fraudulent or malicious act of any **employee** or **officer**, whether committed alone or in collusion with others.

**Our** liability to indemnify **you** under this Extension is subject to the following:

- (a) **we** are not liable to indemnify **you** under this Extension if **you** personally committed or condoned any act, omission or breach excluded by Exclusion 43 'Fraud and Dishonesty';
- (b) **you** must bear any costs or expenses that **you** incur in establishing or substantiating the existence or amount of the **direct financial loss**;

(c) **you** must bear any **direct financial loss** that **you** incur as a consequence of any act or omission occurring after the date that **you** discover, or have reasonable suspicion of, the dishonest, fraudulent, malicious or reckless act or omission;

(d) all interrelated individual dishonest, fraudulent or malicious acts shall be deemed to constitute a single loss under this Extension.

Cover under this Extension shall not exceed the Fidelity Guarantee **limit of indemnity** specified in the **schedule** in the aggregate during the **period of cover**. The Fidelity Guarantee **deductible** specified in the **schedule** shall apply to each **direct financial loss** covered under this Extension.

### 29. Subsidiaries – Pre-Acquisition Liability

**We** agree to indemnify a **subsidiary** against all civil liability for **damages** and awards of claimants costs arising from any **claim** that is first made against the **subsidiary** during the **period of cover** and is notified to **us** during the **period of cover** in respect of any act, error or omission committed or alleged to have been committed by the **subsidiary** before the date that **you** acquired the **subsidiary** but after the retroactive date specified in the **schedule** in respect of its conduct of the same profession as **your professional services**.

### 30. Joint Ventures

Automatic Extension 17 'Joint Ventures' shall be extended to provide indemnity for **you** joint and individual civil liability for **damages** and awards of claimants' costs in respect of any **claim** made against **you** during the **period of cover**, but only in respect of joint venture(s) named in the **schedule**.

### 31. Previous Business

**We** agree to extend indemnity for any **claim** made during the **period of cover** against such person who is or becomes a principal, or **officer** of **yours** in respect of civil liability for **damages** and awards of claimants' costs incurred or alleged to have been incurred on the part of such person in the conduct of the same profession as **your professional business** before that person joined **you**.

### 32. Run-Off after Merger, Takeover or Sale

In the event of the **insured** being subject to a merger, takeover or sale during the **period of cover**, then on application by the **insured** no later than 30 days after the merger, takeover or sale is completed or becomes effective, **we** may extend cover to apply in respect of **claims** first made against **you**, or **inquiries** first commenced and involving **you**, for a period of up to 84 calendar months from the expiry date of the **period of cover** but only for **claims** that arise from acts, errors, omissions or other conduct occurring prior to the date of such merger, takeover or sale.

This Extension is only available if the **insured** accepts the additional terms, conditions, exclusions or premium as **we** may require.

If cover is so extended, Automatic Extension 20 'Newly Acquired or Created Subsidiaries', and Automatic Extension 12 'Extended Notification Period' are deleted from this policy from the effective date of such merger, takeover or sale.

### 33. Incoming Continuous Cover

**We** agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** first made against **you** during the **period of cover**, that arises out of facts which first became known to **you** prior to the **period of cover** where:

- (a) **you** held professional indemnity insurance at the time the facts first became known to **you** (the "previous policy period"); and
- (b) but for **your** failure to notify **your** previous professional indemnity insurer of the facts during the "previous policy period", **you** would have been entitled to indemnity under a previous policy; and
- (c) but for the Exclusion 46 'Prior Claims/Circumstances' **you** would be entitled to indemnity under this policy; and
- (d) **you** have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

**We** are only liable to indemnify **you** to the extent that **we** are obliged to indemnify **you** under the terms and conditions of this policy, but in no circumstances shall the cover granted by this Extension be greater than the terms and conditions of the policy in effect during the "previous policy period" (including the **limit of indemnity** and **deductible**).

**We** may reduce **our** liability to **you** by the amount that fairly represents the extent to which **we** have been prejudiced as a result of the late notification. For the purposes of this Extension, prejudice will include lost opportunities to resolve the **claim** and difficulties or increased costs incurred in defending a **claim** due to the delay in notification.

### 34. Workplace Statutory Liability Insurance

Notwithstanding Exclusion 42 'Fines and Penalties' and Exclusion 44 'Obligation to Employees', **we** will pay on **your** behalf all **defence costs** and any fines and penalties incurred in connection with any **claim** first made against **you** during the **period of cover** for any act, error, omission or other conduct that gives rise to a notifiable incident under work health and safety legislation in Australia, provided that the conduct giving rise to the **claim** was not intentional, wilful, reckless or deliberate.

**We** will not be liable to indemnify **you** for any fine or penalty for which **we** are legally prohibited from indemnifying **you** under any law.

Cover under this Extension shall not exceed \$250,000 in the aggregate for the **period of cover**.

### 35. Collateral Warranties

Notwithstanding Exclusion 41 'Contractual Liability/ Guarantee or Warranty', **we** agree to indemnify **you** against civil liability for **damages** and awards of claimants' costs in respect of any **claim** that is first made against **you** during the **period of cover** in respect of any collateral warranties or similar agreements provided to **us** by **you**, and where **we** have specifically agreed in writing to indemnify **you** in respect of such collateral warranty or similar agreement.

**We** are only liable to indemnify **you** to the extent that the benefits of such warranties or agreements are not greater or longer lasting than those given to the party with whom **you** originally contracted to provide **professional services**, and only to the extent that such liability would have attached to **you** in the absence of such contractual duty, term or agreement.

For the purpose of this Extension, **we** are not liable to indemnify **you** in respect of any **claim** directly or indirectly based upon, attributable to, or in consequence of any:

- (a) liability arising from the provision by **you** of an express term guaranteeing or warranting the fitness for purpose or similar;
- (b) liability arising under any express guarantee that the works will satisfy any particular performance specification or any express guarantee relating to the period of the project;
- (c) any express contractual penalty of a financial nature or liquidated damages.

### 36. Novated Contracts

**We** agree that Exclusion 40 'Assumed Duty or Obligation' does not apply to a duty or obligation assumed by **you** under a novated contract where:

- (a) **you** purchase or acquire another business or contract;
- (b) **you** assume responsibility for **professional services** previously undertaken by another party; or
- (c) **your** contract to provide **professional services** is novated to another party.

**We** are not liable to indemnify **you** under this Extension in respect of:

- (i) liabilities in the novated contract that were not otherwise covered by the policy prior to such contract being novated; or
- (ii) any additional liabilities **you** incur by virtue of the novation of a novated contract to **you**.

For the purposes of this Extension, a novated contract is any contract noted as such by way of endorsement to this policy.

### 37. Proportionate Liability Waiver

We agree that Exclusion 40 'Assumed Duty or Obligation' does not apply to liability assumed by you under a contract by reason of having contracted out of the operation of the Proportionate Liability Legislation.

For the purposes of this Extension, 'Proportionate Liability Legislation' means Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and any similar legislation as amended from time to time.

## Part 4 – Exclusions

We shall have no liability under this policy, including in respect of any claim or cost or expense or indemnity or payment or loss, arising out of, based upon, attributable to or in consequence of:

### 38. Asbestos

asbestos or any materials containing asbestos.

### 39. Associated persons or entities

any claim made by or on behalf of:

- (a) any insured person or entity; or
- (b) any parent, successor or assign of any insured person or entity, or
- (c) any entity in which an insured person or entity or the management of the insured or subsidiary has an executive or controlling interest, or
- (d) any officer or employee unless such claim is made by or on behalf of an officer or employee as a customer or client of yours.

### 40. Assumed Duty or Obligation

any duty or obligation assumed by you outside the normal course of your professional business.

### 41. Contractual Liability/Guarantee or Warranty

- (a) any liability assumed under any contract or agreement; or
- (b) any express or implied guarantee or warranty; except to the extent such liability would have attached to you in the absence of such contract or agreement.

### 42. Fines and Penalties

punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law.

This exclusion shall not apply to compensatory civil penalties, provided that:

- (a) our total liability for the payment of compensatory civil penalties during any one period of cover shall not exceed \$250,000 in the aggregate, which amount shall form part of and is not in addition to the limit of indemnity;
- (b) we will not be liable to indemnify you for any compensatory civil penalty for which we are legally prohibited from indemnifying you under any law;
- (c) we will not be liable to indemnify you for any compensatory civil penalty based upon, attributable to or in consequence of any :
  - (i) wilful, intentional or deliberate failure to comply with any lawful notice or direction, enforcement action or proceeding under any legislation;

- (ii) recklessness;
- (iii) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost.

#### 43. Fraud and Dishonesty

- (a) the gaining of or intentional attempt to gain profit, remuneration or advantage to which **you** were not legally entitled; or
- (b) dishonest, fraudulent, malicious, wilful or criminal act or omission by **you** or **your** consultants, sub-contractors or agents;

in the event that any of the above is established by final adjudication of a judicial or arbitral tribunal or by **your** written admission.

#### 44. Obligation to Employees

bodily injury, mental injury, sickness, disease or death of any **employee** or damage to or destruction of any property of an **employee**, including loss of use, arising out of or in the course of their employment.

#### 45. Radioactivity and Nuclear Risk

ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

#### 46. Prior Claims/Circumstances

- (a) disclosure to **us** in the **submission**, of any **claim**, **inquiry**, investigation, conduct, fact or matter regardless of how it is expressed; or
- (b) facts or conduct which have or has been notified under any earlier policy; or
- (c) facts or conduct which **you** knew, or ought reasonably to have known, prior to the commencement of this policy might give rise to a **claim** or **inquiry**; or
- (d) any proceeding, **inquiry** or similar process on foot at the commencement of this policy, or any proceeding, **inquiry** or similar process derived from essentially the same facts as in such proceeding, **inquiry** or process.

#### 47. Retroactive Date

any civil liability, act, error or omission or other conduct which first occurs before the retroactive date specified in the **schedule**.

#### 48. Trading Debts

any trading debt that **you** incur or any guarantee that **you** give for a debt.

#### 49. USA Jurisdiction

- (a) any **claim** made in or determined pursuant to the law of the United States of America or any of its territories or protectorates, or any **inquiry** conducted in the United States of America or any of its territories or protectorates; or
- (b) the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or any of its territories or protectorates.

#### 50. War and Terrorism

war (declared or otherwise), **terrorism**, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

#### 51. Costs Estimates

any estimate of construction cost or cost estimate being exceeded except where such estimates are compiled by a registered quantity surveyor or other appropriately qualified professional.

#### 52. Insolvency

the insolvency, liquidation, administration or receivership of **you** or any party involved in any project or contract.

#### 53. Insurance and Financial Advice

- (a) any failure to effect or maintain insurance, surety or bond; or
- (b) advice on insurance; or
- (c) advice on investment, marketing, financial or tax matters; or
- (d) the provision of finance.

#### 54. Manufacturing, Construction and Property Development

- (a) defects or alleged defects in any product manufactured, supplied, installed, assembled, erected or maintained by **you** except to the extent that such defects are attributable to **your** faulty design or specification; or
- (b) any construction, assembly, installation, erection or maintenance other than where a **claim** is attributable to **your** faulty design or specification; or

- (c) supervision of any construction, assembly, installation, erection or maintenance unless such supervision is provided as a specifically contracted construction manager or project manager (but not including supervision as would be undertaken in a capacity normally provided by a building or engineering contractor acting in such capacity alone); or
- (d) **your** activities as a property developer.

## 55. Use of Property

the ownership, use, occupation or leasing of any property by **you**, to or on **your** behalf.

## 56. Personal Injury and Property Damage

- (a) bodily injury, sickness, disease, mental injury, mental anguish, nervous shock, emotional distress or death of any person; or
- (b) physical loss of, damage to, or destruction of any tangible property including any loss of use of tangible property;  
unless directly arising out of your provision of or failure to provide professional services.

# Part 5 – Claims Conditions

## 57. Notification

**You** must notify **us** of any **claim** made against **you** during the **period of cover** as soon as practicable after the **claim** is made. **You** must give notice of any **claim**, loss or other matter in writing, and send it to:

The Claims Manager,  
Professional Risks Division  
Allianz Australia Insurance Limited  
2 Market Street, Sydney, NSW, 2000.

## 58. Co-operation

**You** must at **your** own cost:

- (i) render all reasonable assistance to **us** and co-operate in the defence of any **claim** or **inquiry** and the assertion of indemnification and contribution rights;
- (ii) give such information and assistance to **us** as **we** may reasonably require to enable it to investigate any **claim** or **inquiry** or determine **our** liability under this policy.

## 59. Mitigation

**You** must use all due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any civil liability, **defence costs** or any other costs or loss in respect of which **we** are liable to indemnify **you** under this policy.

## 60. Our Consent

**You** shall not admit or assume any liability, enter into any settlement agreement or consent to any judgment in relation to any **claim** or **inquiry** without **our** prior written consent.

## 61. Defence and Settlement

**We** do not assume any duty to defend, and **you** shall defend and contest any **claim** made against **you** unless **we** elect in writing to take over and conduct the defence and settlement of any **claim**. If **we** do not so elect, **we** shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement.

If there is any dispute between **us** and **you** about whether to agree to a proposed settlement or about whether a **claim** should continue to be defended the dispute shall be dealt with in accordance with Condition 61 'Disputes'.

## 62. Disputes

### 62.1 General

Neither **we** nor **you** may require the other to contest any **claim** unless Senior Counsel advises that the **claim** should be contested.

In formulating his or her advice, Senior Counsel must take into consideration the **damages** and costs which are likely to be recovered by the plaintiff, the likely **defence costs** and **your** prospects of successfully defending the **claim**.

#### 62.2 Appointment of Senior Counsel

If a **claim** is made against **you**, **we** may nominate a Senior Counsel. If **we** nominate a Senior Counsel, **you** must notify **us** whether or not **you** approve of **our** nominee as soon as practicable. If **we** cannot agree with **you** upon Senior Counsel within a reasonable time, Senior Counsel will be such person as the President of the New South Wales Bar Association appoints.

#### 62.3 Costs of Senior Counsel's Opinion

The cost of Senior Counsel's opinion is included in the **defence costs**.

#### 62.4 Meaning of 'Senior Counsel'

For purposes of this clause, 'Senior Counsel' means a practising barrister who is entitled to practice as a Queens Counsel or Senior Counsel in Australia or New Zealand.

### 63. Election to Contest

If **we** recommend settlement of any **claim** and **you** do not agree to such settlement, **you** may elect to contest the **claim**. However, **our** liability in connection with the **claim** is then limited to the amount **we** recommend in settlement plus **defence costs** incurred with **our** consent up to the date **we** recommend settlement to **you**.

### 64. Allocation

#### 64.1 General

In the event there are a number of causes which contribute to a **claim** made against **you**, **we** agree to indemnify **you** in respect of **your** liability for that part of the **claim**, including **defence costs**, which is covered under the policy irrespective of whether one or more of the other causes is excluded under the policy.

#### 64.2 Best Efforts

Both parties will use their best efforts to agree upon what is attributable to indemnified and excluded causes. In the event that an agreement cannot be reached an Expert shall determine, as an Expert but not an arbitrator, the causes of the loss and the percentage attributable to each cause. Until such Expert has made his or her determination, **we** may, at **our** absolute discretion, pay such amount **insured** under this Condition as **we** consider appropriate.

#### 64.3 Meaning of 'Expert'

'Expert' shall mean an appropriately qualified industry expert nominated by **us**.

## Part 6 – Other Conditions

### 65. Assignment

This policy and any rights under or in respect of it cannot be assigned by **you** without **our** prior written consent.

### 66. Cancellation

- (i) **You** may cancel this policy by giving notice in writing to **us**. If such notice is given, the cancellation will take effect on the day the notice is received by **us**.
- (ii) **We** may cancel this policy in any of the circumstances set out in the Insurance Contracts Act 1984. Such cancellation is to take effect 30 days from the time notification is received by **you**.
- (iii) Upon cancellation by **you** or **us**, **you** will receive an 80% pro rata refund of premium for the unexpired portion of the **period of cover** subject to no **claims** or circumstances or **inquiries** having been made during the **period of cover**.
- (iv) When the premium is subject to adjustment, cancellation will not affect **your** obligation to supply to **us** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

### 67. Change of Control

**We** shall not be liable to make any payment or to provide any services in connection with any **claim** or **inquiry** arising out of, based upon or attributable to any civil liability, act, error or omission or other conduct committed after the occurrence of a merger, takeover, or sale, except to the extent that there is cover under Optional Extension 32 'Run-off after Merger, Takeover or Sale', and such cover has been included under this policy.

### 68. Currency

All monetary amounts under this policy are expressed and payable in Australian currency. If judgement is rendered, settlement is denominated or other amount payable under this policy is stated in a currency other than Australian dollars, payment under this policy shall be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars determined by the free market rate of exchange as published in the currency conversion website [www.oanda.com](http://www.oanda.com), or if no longer current, a currency conversion website selected by **us** on the date the final judgement is reached or the amount of the settlement is agreed upon.

## 69. GST

The amount that **we** are liable to pay under this policy will be reduced by the amount of any input tax credit that you are or may be entitled to claim for the supply of goods or services covered by that payment.

If **you** are entitled to an input tax credit for the premium, **you** must inform **us** of the extent of that entitlement at or before the time **you** make a **claim** under this policy. **We** will not indemnify **you** for any GST liability, fines or penalties that arise from or is attributable to **your** failure to notify **us** of **your** entitlement (or correct entitlement) to an input tax credit on the premium.

If **you** are liable to pay a **deductible** under this policy, the amount payable will be calculated after deduction of any input tax credit that **you** are or may be entitled to claim on payment of the **deductible**.

## 70. Plurals, Headings and Titles, Interpretation

Words and expressions in the singular shall include the plural, and vice versa. Also, where a term of this policy is not specifically defined, it is agreed that the definition normally attributed to it by any applicable law or business practice shall apply.

This policy, its **schedule** and any endorsements are one contract in which, unless the context otherwise requires:

- (i) headings are descriptive only, not an aid to construction;
- (ii) singular includes the plural, and vice versa;
- (iii) the male includes the female and neuter;
- (iv) all references to specific legislation include amendments to and re-enactments of such legislation; and
- (v) references to positions, offices or titles shall include their equivalents in any jurisdiction in which a covered **claim** is made or covered **inquiry** conducted.

## 71. Scope and Governing Law

Any issue relating to the construction, validity or operation of this policy shall be determined in accordance with the laws of the Commonwealth of Australia and the Australian State or Territory in which the policy is issued. Except as otherwise provided herein, the parties submit to the exclusive jurisdiction of the Australian courts.

## 72. Subrogation

Unless otherwise stated in the policy, in the event of any payment under this policy, **we** shall be subrogated to all of **your** rights of recovery in respect of such payment. In addition, **you** shall execute all and any documentation and do any other things, at **your** own cost, as may be necessary to enable **us** to bring an action or suit for such recovery.

Any recovery received shall first be applied against the costs of the recovery proceeding, then any payment made by **us** and then to any balance remaining thereafter being remitted to **you** up to the amount of any uninsured loss.

**You** shall not do anything which shall prejudice **our** rights under this Condition.

**We** agree not to exercise any such rights of recovery against any **officer** or **employee** unless it is established that Exclusion 43 'Fraud and Dishonesty' applies to the **claim** and the **officer** or **employee**.

In **our** sole discretion, **we** may, in writing, waive any of its rights set forth in this Condition.

## 73. Alteration to Risk

73.1 **You** must notify **us** as soon as practicable of any material alteration to risk during the **period of cover** including:

- (a) if **you** submit to voluntary bankruptcy, receivership or liquidation; or
- (b) if **you** fail to pay debts; or
- (c) if **you** breach any other obligation giving rise to the appointment of a receiver, bankruptcy, or winding up proceedings; or
- (d) any material change in the nature of the **professional services**.

73.2 Where such notice is given and/or where there is any material alteration to the risk, **we** reserve the right to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

73.3 Notwithstanding 73.2, in the event that **you** should become bankrupt or insolvent, **we** shall not be relieved thereby of the payment of any **claim** hereunder solely due to such bankruptcy or insolvency.

## Part 7 – Definitions

In this policy, unless the context requires otherwise:

- (a) **claim** means
- (i) a written or verbal demand by a third party for compensation or **damages**; or
  - (ii) a civil proceeding brought by a third party for recovery of compensation or **damages**,
- in respect of an actual or alleged breach of professional duty.
- (b) **currency** means any negotiable instruments, bearer bonds, coupons, stamps, money, bank or currency notes.
- (c) **damages** means any amount that **you** shall be legally liable to pay as monetary compensation in respect of judgments or arbitral awards rendered against **you**, or settlements entered into with **our** prior written consent.
- (d) **deductible** means the amount specified as such in the **schedule**.
- (e) **defence costs** means all reasonable legal fees, costs and expenses, including disbursements for which **you** are legally liable and which **you** incurred after a **claim** is made, with **our** prior written consent (such consent not to be unreasonably delayed or withheld), in the investigation, defence, adjustment, settlement or appeal of any **claim**.
- (f) **direct financial loss** means the physical loss of **currency** belonging to **you** or in **your** care, custody or control, sustained by **you** directly as a result of a dishonest, fraudulent or malicious act. It does not mean:
- (i) costs, fees or expenses of prosecuting or defending any demand, **claim** or legal proceeding resulting from a **direct financial loss** covered by this policy;
  - (ii) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**;
  - (iii) salary, wages, commissions, fees, bonuses, promotions, awards, profit-sharing, superannuation or any other remuneration of any **employee** or **officer**;
  - (iv) complete or partial non-payment under any credit arrangement;
  - (v) interest or other indirect or consequential loss;
- (vi) any financial loss sustained, whilst in the care, custody control of any financial institution or armoured security company;
- (vii) expenses incurred in replacing data or redesigning of software;
- (viii) loss sustained by one insured person or entity to the advantage of another insured person or entity.
- (g) **discovered** means when an **officer** first becomes aware of facts which would cause a reasonable person to believe that a **direct financial loss** has been or is likely to be incurred, even though the exact amount or details of the **direct financial loss** are not known at the time of discovery.
- (h) **employee** means any natural person who is, has been or during the **period of cover** becomes expressly engaged under a contract of employment with any **insured** or **subsidiary**.
- (i) **inquiry** means
- (i) an investigation, examination or inquiry by any professional body of which **you** are a member, or external official person or body having legal authority to conduct an investigation, including a Royal Commission, into **your professional services** and for which:
    - (a) the notice or process requiring **you** to attend or to produce documents or answer questions is first served during the **period of cover**; or
    - (b) **you** are identified in writing during the **period of cover** by such authorised person or body as a target of the investigation, examination or inquiry; or,
  - (ii) a raid on, or on-site visit to, **you** which first takes place during the **period of cover** by a regulator, government body or any other external official person or body having legal authority to conduct an investigation into the provision of **your professional services** and which involves **you** in the production, review, copying or confiscation of documents or an interview; or
  - (iii) a public announcement relating to (ii) above made by the authority performing the raid or on-site visit.
- It is not necessary that a **claim** is made against **you**.

However, **inquiry** does not include:

- (iv) any of (i), (ii) or (iii) above that relates to an industry event or practice and not specifically to **your** conduct providing **professional services**;
  - (v) routine regulatory supervision, inspection or compliance reviews;
  - (vi) any **inquiry** conducted in the United States of America or Canada or any of its territories or possessions.
- (j) **inquiry costs** means all reasonable legal costs and expenses for which **you** are legally liable and which are incurred by **you**, with **our** prior consent (such consent not to be unreasonably delayed or withheld), for legal representation in connection with, preparation for, attendance at or compliance with an **inquiry**.
- (k) **insured** means the organisation or natural person(s) specified as such in the **schedule**.
- (l) **limit of indemnity** means the amount specified as such in the **schedule**.
- (m) **mitigation costs** means all costs and expenses necessarily incurred by **you** that are:
- (i) directly, solely and exclusively attributable to; and
  - (ii) reasonably incurred;
- to mitigate or rectify an error or omission that could have resulted in a **claim** being made against **you** and for which the policy would respond if a **claim** had been made.
- It does not mean or include:
- (i) **your** loss of opportunity, revenue or profits;
  - (ii) amounts paid by **you** solely for the purpose of reducing or removing reputational risk to the business;
  - (iii) **damages**, compensation or other payments made, or consideration given, to customers, clients or potential claimants;
  - (iv) any amount once a **claim** is made.
- (n) **officer** means
- (i) a director or secretary of the **insured** or **subsidiary**; or
  - (ii) a person:
    - (a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **insured** or **subsidiary**; or
    - (b) who has the capacity to affect significantly the **insured's** or **subsidiary's** financial standing; or

(c) in accordance with whose instructions or wishes the directors of the **insured** or **subsidiary** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the **insured** or **subsidiary**).

- (o) **period of cover** means the period of time specified as such in the **schedule**.
- (p) **professional services** means the professional services provided by **you** for a fee or other remuneration in respect of the professional business as specified in the **schedule**.
- (q) **public relations expenses** means all reasonable payments incurred by **you** with **our** prior written consent (such consent not to be unreasonably delayed or withheld) for public relations, crisis management or legal services reasonably required to prevent or minimise adverse or negative publicity as a direct result of a **claim** or **inquiry** covered by this policy.
- It does not mean or include:
- (i) **response costs** as defined under Optional Extension 27 "Breach of Privacy: Response Costs and Fines and Penalties";
  - (ii) **your** overheads, staff remuneration or management time;
  - (iii) compensation or other payments made to customers, clients or potential claimants;
  - (iv) fines or penalties; or
  - (v) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief.
- (r) **schedule** means the **schedule** relating to and forming part of this policy, including any endorsements thereto.
- (s) **submission** means each and every proposal form, the statements, and representations therein, its attachments and all other material information submitted to **us** in respect of this policy.
- (t) **subsidiary** means any entity at the commencement of the **period of cover** that the **insured** either directly or indirectly:
- (i) controls the composition of the board of directors;
  - (ii) controls more than half of the voting power; or
  - (iii) holds more than half of the issued share capital.

(u) **terrorism** means

an act, including but not limited to the use of force or violence and/or the 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

(v) **we, us, our** means

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(w) **you, your** means

- (i) the **insured** and any **subsidiary** thereof; and
- (ii) any **officer** but only when acting within the scope of their duties in the performance of **professional services** (as distinguished from carrying out duties as an **officer** of the **insured** in relation to the **insured**'s own affairs); or
- (iii) any **employee** but only when acting within the scope of their duties in the performance of **professional services**.

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