

Professional Indemnity Solutions



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Important

Statutory Notice - Section 40 Insurance Contracts Act

This Notice attaches to but does not form part of the Policy.

This is a 'Claims Made and Notified' liability insurance policy. It ONLY provides cover if:

- (i) a claim is made against the Insured, by some other person, during the period when the policy is in force; AND
- (ii) the Claim arises out of an occurrence which takes place after the Retro-Active Date stipulated in the Policy Schedule.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period when the policy is in force, of any occurrence or facts which might give rise to a claim against them by some other person, then provided that the insured notifies the insurer of the matter before the policy expires, the insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured while the policy is in force. If the insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to the insurer before the expiry of the policy, the insured will not have the benefit of Section 40(3) and the insurer may refuse to pay any subsequent claim, notwithstanding that the occurrence giving rise to it may have taken place during the policy period. If a claim is actually made against the insured by some other person during the policy period but is not notified to the insurer until after the policy has expired, the insurer may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

Claims Made Coverage

Subject to payment of the premium set out in this Schedule, Zurich Australian Insurance Limited, ABN 13 000 296 640 (the Insurer) agrees with the Insured to provide insurance on the terms set out in this policy.

The policy consists of this policy wording, the Proposal Form, the Schedule and any Automatic Features or endorsements.

This policy has been signed for and on behalf of the Insurer at the place and on the date stated in the Schedule.

Section 1 – Insuring Clause

Insuring clause

- 1.1 The Insurer agrees to indemnify the Insured against Loss incurred in connection with any Civil Liability Claim, first made against the Insured and notified to the Insurer during the Period of Insurance, in respect of the Insured's conduct of the Profession described in the Schedule.

Section 2 – Automatic Features

Cover is automatically provided, at no additional premium and on the same terms and in the same manner as in Insuring Clause 1.1, for the features described below. Each feature is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it, and no feature shall increase the Insurer's Limit of Liability, unless expressly stated otherwise.

Consultants, subcontractors and agents

2.1 The Insurer agrees to indemnify the Insured in respect of Loss arising from any Claim made against the Insured arising out of the conduct of any consultants, sub-contractors or agents of the Insured, in the conduct of the Profession, for whose conduct the Insured is legally liable.

Continuous cover

2.2 If the Insured has neglected, through error or oversight only, to avail itself of the benefit of Section 40, Subsection 3 of the Insurance Contracts Act 1984 (Cth), in relation to an earlier Policy of similar type to this one issued to it by the Insurer, or to report a Claim actually made upon the Insured during the period of such a policy, then provided that the Insured has maintained uninterrupted insurance of the same type with the Insurer since the expiry of that earlier policy then, notwithstanding Exclusion 3.10, the Insurer will permit the matter to be reported under this policy and will indemnify the Insured, provided that:

- (a) the indemnity will be subject to the applicable Limit of Liability of the earlier policy under which the matter should have been reported;
- (b) the Insurer may reduce the indemnity entitlement by the monetary equivalent of any prejudice which it has suffered as a result of the delayed notification.
- (c) the indemnity will be subject in addition to all of the terms, conditions, definitions and exclusions, other than the Limit of Liability, contained in this current policy.

Dishonesty

2.3 Notwithstanding Exclusion 3.2, the Insurer agrees to indemnify the Insured for Claims arising as a result of any actual or alleged dishonest, fraudulent, criminal or malicious activity in the conduct of the Profession by an employee or employees of the Insured provided that:

- (a) no indemnity is available to the dishonest employee(s) themselves, or at all where the Insured has knowingly engaged in or condoned such conduct;
- (b) for the purpose of this clause: an employee shall mean a person or persons in the direct service of the Insured, but shall exclude any principal or director.

Estates and legal representatives

2.4 The Insurer agrees to indemnify the estate, heirs, legal representatives or assignees of any Insured who are incapable of managing their own affairs by reason of mental disorder or other incapacity or who are deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant Insureds would be entitled to be indemnified in respect of Claims made against them.

Joint venture

- 2.5 The Insurer agrees to indemnify the Insured in respect of that proportion of Loss attaching directly to the Insured, in respect of a Claim made against the Insured arising out of any activities in which the Insured is engaged in the conduct of the Profession as a partner in a joint venture.

Libel, slander and defamation

- 2.6 The Insurer agrees to indemnify the Insured in respect of any Claim for unintentional libel, unintentional slander or other unintentional defamation by an Insured in the conduct of the Profession.

Loss of documents

- 2.7 The Insurer agrees to indemnify the Insured in respect of any Claim made against the Insured for:
- (a) loss, damage or destruction of any documents and/or computer records belonging to the Insured or for which the Insured is legally responsible, occurring in the conduct of the Profession after the Retroactive Date; and
 - (b) all reasonable costs and expenses incurred by the Insured in replacing and/or restoring such documents.

However,

- (i) the Insurer shall only be liable for any such loss, damage or destruction which is notified to the Insurer within 28 days of discovery (and within the Period of Insurance) and rectification of which is undertaken as soon as practicable by the Insured with the prior written consent of the Insurer, such consent not to be unreasonably withheld;
- (ii) the Insurer shall not be liable for any Claim directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused;
- (iii) the Insurer shall not be liable for any Claim directly or indirectly arising out of or in connection with any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

The Limit of Liability for this feature is the sub-limit specified in the Schedule, which applies to all Claims covered under (a) and (b) above, in the aggregate.

Merger/takeover/sale/winding up of Insured - run off coverage

- 2.8 If during the Period of Insurance the Insured is subject to a merger, takeover, sale or winding up, then coverage shall continue through to the expiry of this policy, but shall apply only to Claims in respect of Loss arising from conduct which has taken place or is alleged to have taken place prior to the effective date of the merger, takeover, sale or winding up.

Upon application by the Insured and subject to written agreement by the Insurer prior to expiry of the Period of Insurance, and subject as well to payment of any additional premium required by the Insurer (to be paid in full immediately upon expiry of this Period of Insurance) cover provided in accordance with this feature may be extended for an additional Period of Insurance, as may be determined by agreement between the Insured and Insurer.

Newly created / acquired Subsidiary Company

- 2.9 The Insurer agrees to indemnify any new Subsidiary Company or other entity created or acquired by the Insured during the Period of Insurance, in respect of Claims which are made against it during the Period of Insurance and which are made within 30 days from the date of creation or acquisition.

Cover afforded by this feature only applies to Claims arising from any conduct which occurred or is alleged to have occurred subsequent to the date of acquisition or creation of the Subsidiary Company, unless otherwise specified in an endorsement to this policy.

Past Subsidiary Company

- 2.10 Coverage shall extend to those entities which were once Subsidiary Companies but have since ceased to be Subsidiary Companies. Coverage in this respect shall only apply to Claims arising from conduct which occurred or is alleged to have occurred between the date of acquisition or creation of the Subsidiary Company by the Insured and the date such Subsidiary Company ceased to be a Subsidiary Company.

Section 3 – Exclusions

This policy does not provide any indemnity against Loss in connection with any Claim:

Contractual Liability, assumed liability & trading debts

- 3.1 directly or indirectly arising from or in connection with:
- (a) any contractual liability or assumed liability, unless the Insured would in any event be legally liable in the absence of such contractual or assumed liability;
 - (b) any liability assumed by an Insured under any guarantee or warranty; or
 - (c) any trading debt incurred by the Insured.

Dishonesty

- 3.2 directly or indirectly arising from or in connection with:
- (a) any actual dishonest, fraudulent, criminal or malicious conduct of any Insured;
 - (b) any Civil Liability incurred by the Insured, in the conduct of the Profession, which arises from conduct which is established to have been committed with a reckless disregard for the consequences thereof; or
 - (c) any willful breach of any statute, contract or duty by any Insured.

Employer's liability

- 3.3 directly or indirectly arising from or in connection with an Insured's liability as an employer, whether under Workers Compensation legislation or otherwise, for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any employee of the Insured or for the destruction or loss or damage to any tangible property belonging to an employee, including loss of use thereof, arising in the course of their employment.

Insolvency

- 3.4 directly or indirectly arising from or in connection with the Insolvency of the Insured.

Intellectual Property Infringement

- 3.5 directly or indirectly arising from or in connection with plagiarism, infringement or violation of copyright, of trademark, service mark, registered design, license, patent or of any other form of intellectual property whether registered or unregistered.

Manufacturing / efficacy / faulty workmanship

- 3.6 directly or indirectly arising out of or in connection with:
- (a) the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the Insured; or
 - (b) the cost of remedying any defect in any goods designed, manufactured, imported, sold, constructed, installed, distributed, treated, altered, repaired, supplied or serviced by the Insured.

Money and negotiable instruments

3.7 directly or indirectly arising from or in connection with any loss of money, negotiable instruments including shares, bearer bonds, coupons, stamps, bank or currency notes.

Occupier's liability

3.8 directly or indirectly arising from or in connection with the occupation or ownership of any real property by the Insured.

Personal Injury / Property Damage

3.9 directly or indirectly arising from or in connection with Personal Injury or Property Damage suffered or incurred by any person or entity.

Prior and pending

3.10 made against or in any way intimated to the Insured prior to the commencement of the Period of Insurance or directly or indirectly arising from or attributable to:

- (a) any facts or circumstances of which the Insured was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the Period of Insurance, as matters out of which a Claim against the Insured might possibly arise; or
- (b) the Insured's conduct of the Profession prior to the Retroactive Date.

Radioactivity / pollution / asbestos / war

3.11 directly or indirectly arising from or in connection with:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof; or
- (b) seepage, pollution or contamination of whatever nature and however occurring; or
- (c) asbestos, mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there; or
- (d) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government, public or local authority.

Related entities

3.12 made against the Insured by or on behalf of:

- (a) any Insured or any Subsidiary Company or other related entity of any Insured; or
- (b) any Insured, who at the time of the conduct giving rise to the Claim, is a Family Member unless such person is acting without the co-operation or solicitation of any Insured.
- (c) any insured or any Joint-Venture Partner of any Insured.
- (d) any trustee company:
 - (i) which is controlled or operated by any Insured; or
 - (ii) where any Insured is a beneficiary of the trust or has a direct or indirect financial interest in it.

Retroactive date

3.13 directly or indirectly arising from or in connection with conduct of the Insured which has taken place or is alleged to have taken place prior to the Retroactive Date specified in the Schedule.

Terrorism

3.14 directly or indirectly arising from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence thereto, or any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

USA/Canada exposure

- 3.15
- (a) directly or indirectly arising out of or in connection with conduct of the Insured anywhere within the territorial limits of the United States of America or the Dominion of Canada, their territories or protectorates;
 - (b) legal proceedings in respect of which are brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada, their territories and protectorates;
 - (c) for the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada or their territories and protectorates.
 - (d) Which is pursued by way of Arbitration, Mediation, Conciliation, Expert Determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of the United States of America, the Dominion of Canada, their Territories and Protectorates, or for the recovery of any Award or costs issued or incurred in connection with any such procedure.

Section 4 – Definitions

Act of Terrorism

4.1 Act of 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 along or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Civil Liability

4.2 Civil Liability means liability of the Insured which arises pursuant to any civil cause of action for damages or for other monetary payment of a compensatory or restitutionary nature but does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

Claims

4.3 Claims means:

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served on the Insured; or
- (b) an oral or written demand for compensation made by a third party against the Insured.

All Claims arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single Claim, for the purposes of the Limit of Liability and the Excess.

Defence Costs

4.4 Defence Costs means:

- (a) costs, charges or expenses (other than wages, salaries or fees of the Insured) in investigating, defending and/or settling Claims or in bringing or defending appeals in connection with them; and
- (b) reasonable costs, charges and expenses of legal representation, not otherwise covered by this policy, of the Insured at any inquiry, prosecution or hearing which the Insured is legally compelled to attend and which relates to matters which may give rise to a Claim, provided that:
 - (i) the requirement that the Insured attend the inquiry, prosecution or hearing was imposed during the Period of Insurance;
 - (ii) the Insurer's prior consent to the incurring of any costs, charges or expenses is obtained;
 - (iii) Defence Costs falling within this sub-clause 4.4(b) are only indemnifiable up to the sub-limit specified in the Schedule, however, the Excess does not apply to them;
 - (iv) the phrase 'inquiry, prosecution or hearing', as employed in this sub-clause 4.4(b), do not include a Royal Commission or any audit, prosecution, hearing or other proceeding conducted by the Australian Taxation Office, by the National Crime Authority or by any successor body to it, by any independent commission against corruption or by a parliament or any committee of a parliament;
 - (v) the matters which are the subject of the inquiry, prosecution or hearing all took place or are alleged to have taken place after the Retro-active Date.

Excess

4.5 Excess means the excess specified in the Schedule, which shall apply to all Loss, including Defence Costs other than those falling within sub-clause 4.4(b), arising from a single Claim, and to all Automatic Features.

Family Member

4.6 Family Member means any spouse, former spouse, partner, parent, child grandparent, aunt, uncle, niece, nephew, cousin or sibling of an Insured.

Insolvency

4.7 Insolvency means in relation to any Insured:

- (a) being under administration or insolvent, each as defined in the Corporations Act 2001 (Cth);
- (b) having a controller (as defined in the Corporations Act 2001 (Cth)) appointed;
- (c) being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, under administration, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- (d) being otherwise unable to pay any debts as and when they fall due;
- (e) having anything with the same or similar effect happen under the laws of any jurisdiction.

Insured

4.8 Insured means:

- (a) the legal entity, partnership, company or corporation specified in the Schedule as the Insured;
- (b) the predecessors in business of the Insured as stated in (a) above;
- (c) any person who is or becomes during the Period of Insurance a principal, partner or director of the Insured (in respect of work performed for and on behalf of the Insured and in respect of work performed in the Profession prior to the person joining the Insured);
- (d) any former principal, partner or director of the Insured (in respect of work performed for and on behalf of the Insured);
- (e) any past or present employee of the Insured acting within the scope of their employment;

Joint-Venture Partner

4.9 Joint-Venture Partner means any person or entity with whom the Insured is engaged in a common adventure, the profits of which are to be shared between the Insured and that other person or entity, including any jointly owned corporation incorporated or designated for the purpose.

Limit of Liability

4.10 Limit of Liability means the applicable total limit of the Insurer's liability, under or in connection with this policy, in respect of Loss in connection with any one Claim or with all Claims in the Period of Insurance, as specified in the Schedule.

Loss

4.11 Loss means the total amount which the Insured is required to pay in connection with:

- (a) final adjudication or settlement of a Claim; and
- (b) Defence Costs incurred in connection with that Claim;

but does not include:

- (i) fines or penalties, whether civil or criminal in nature;
- (ii) punitive, exemplary or multiple damages;

- (iii) liquidated damages prescribed under contract;
- (iv) wages, salary, commission, fees, charges and other form of remuneration or profit lost or foregone by the Insured, as a result of a Claim;
- (v) any component of an award or settlement which represents the cost of performance of the Insured's original contractual obligations, non-fulfillment or negligent performance of which has given rise to the Claim.

Period of Insurance

4.12 Period of Insurance means the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between the Insured and the Insurer.

Personal Injury

4.13 Personal Injury means:

- (a) bodily injury, sickness, disease, death or disability;
- (b) physical or mental stress, trauma or nervous shock and any consequences thereof, including but not limited to Post Traumatic Stress disorder, anxiety, neurosis or phobia of any description;
- (c) false arrest, false imprisonment, wrongful detention, malicious prosecution, embarrassment and/or humiliation.

Profession

4.14 Profession means the profession, business or occupation specified in the Schedule.

Property Damage

4.15 Property Damage means physical injury to or destruction of tangible property, including the resultant loss of use of that damaged or destroyed property and any consequential losses resulting therefrom.

Retroactive Date

4.16 Retroactive Date means the retroactive date specified in the Schedule.

Schedule

4.17 Schedule means the Schedule attached to this policy or any schedule substituted during the Period of Insurance, duly signed, stamped and dated by an authorised officer of the Insurer.

Subsidiary Company

4.18 Subsidiary Company means any company or other legal entity over which the Insured exercises effective governance or control or in respect of which the Insured directly or indirectly:

- (a) controls or controlled the composition of the board of directors; and/or
- (b) controls or controlled more than half of the voting power; and/or
- (c) holds or held more than half of the issued share capital or other ownership of the entity, and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the Insured pursuant to the Corporations Act or the applicable Australian Accounting Standard.

Section 5 – Claims Conditions

Advance payment of Defence Costs

5.1 The Insurer will advance the reasonable Defence Costs incurred by an Insured in the defence of a Claim, as they are incurred and prior to the final adjudication of the Claim, where:

- (a) indemnity under this policy is confirmed in writing by the Insurer; or
- (b) at the Insurer's absolute discretion, without admitting indemnity, the Insurer agrees to advance such Defence Costs.

All such payments shall be repaid to the Insurer by the Insured (or where more than one Insured has received such payments, by such Insureds severally and according to their respective interests) in the event and to the extent that the Insured is not entitled to payment of such Defence Costs under the terms and conditions of this policy.

Allocation

5.2 If both Loss covered by this policy and loss not covered by this policy are incurred, either because a Claim against the Insured includes both covered and uncovered matters or because a Claim is made against both Insureds and others, the Insured and the Insurer shall use their best efforts to agree upon a fair and proper allocation of the amount, between covered Loss and uncovered loss.

If the Insurer and the Insured agree on an allocation of Defence Costs, the Insurer shall, subject to Claims Condition 5.1, advance Defence Costs allocated to the covered Loss. If the parties cannot agree on allocation, the Insurer shall, subject to Claims Condition 5.1, advance Defence Costs which the Insurer believes to be covered under the policy until a different allocation is negotiated, arbitrated or judicially determined. Any such determined allocation of Defence Costs on account of a Claim shall be applied retroactively to all Defence Costs on account of such Claim, notwithstanding any prior advancement on a difference basis. Any advancement of Defence Costs shall be repaid to the Insurer by the Insureds severally according to their respective interests, if and to the extent that it is determined that such Defence Costs are not insured by this policy.

Any allocation or advancement of Defence Costs in connection with a Claim shall not pre-determine the allocation of other Loss on account of such Claim. In any arbitration, suit or other proceedings between the Insurer and the Insureds no presumption shall exist concerning what is a fair and proper allocation between covered Loss and uncovered loss.

Defence and settlement

5.3 The Insured shall not admit liability for or settle any Claim without the consent of the Insurer or incur any costs or expenses without the consent of the Insurer, which shall not unreasonably be withheld.

The Insured shall assert all appropriate defences and cross-claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the Claim.

The Insurer shall not settle any Claim against any Insured without the consent of the relevant Insured, which shall not unreasonably be withheld. The Insurer shall retain the right to actively participate in the defence and settlement of any Claim in respect of which indemnity is sought under this policy.

If the Insurer and the Insured cannot agree upon the appropriateness or otherwise of a settlement, then the matter will be determined in accordance with advice of Senior Counsel, the choice of whom shall be mutually agreed by the Insured and the Insurer and whose fee shall be paid by the Insurer, in addition to the Limit of Liability).

Handling and co-operation

5.4 The Insured shall upon the Insurer's request give all such information and assistance to the Insurer as it may reasonably require, to enable it to investigate and to defend a Claim and to make any cross-claim for contribution, indemnity or damages and/or to enable the Insurer to determine its liability under this policy. In particular, the Insured shall inform the Insurer of any other insurance, indemnity or other source of compensation, statutory, contractual or otherwise, pursuant to which the Insured may be entitled to any benefit in respect of the Claim.

The Insurer shall be entitled at its option (but not obliged) at any time to take over and conduct in the name of the Insured the defence or settlement of any Claim against the Insured, and to claim indemnity or contribution at any time, in the name of the Insured, from any party against whom the Insured may have such rights.

Payments in respect to Goods and Services Tax

5.5 When the Insurer makes a payment to the Insured, or on behalf of the Insured, under this policy for the acquisition of goods, services or other supply, the Insurer will reduce the amount of the payment by the amount of any input tax credit that Insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When the Insurer makes a payment to the Insured, or on behalf of the Insured, under this policy as compensation instead of payment for the acquisition of goods, services or other supply, the Insurer will reduce the amount of the payment by the amount of any input tax credit that Insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

Reinstatement

5.6 In the event that the Limit of Liability under this policy has been entirely exhausted during the Period of Insurance, by Claims indemnified or for which the insurer has agreed to indemnify, the Insured may request and the Insurer will agree that the Limit of Liability be reinstated in the same amount, once only, conditional upon the following stipulations:

- (a) that the reinstated Limit of Liability shall only apply to Claims which do not arise out of or in connection with the same source or originating cause as do any of the Claims already paid or payable out of the original Limit of Liability;
- (b) that all other terms, conditions, exclusions and limitations of the policy shall continue to apply, in the same manner, in respect of Claims to which the reinstated Limit of Liability applies;
- (c) that the insured has satisfied the insurer that it has no other valid and collectible excess or other insurance to call upon, after exhaustion of the original Limit of Liability, or that all such insurance (including any automatic reinstatement entitlement to which it may be subject) has also been exhausted by Claims indemnified or for which the insurers in question have agreed to indemnify; and
- (d) that the request for reinstatement be made by the Insured, and all requirements relating to it be satisfied by them, before the expiry of the Period of Insurance.

Reporting and notice

5.7 The Insured shall as a condition precedent to their right to be indemnified under this policy give to the Insurer written notice as soon as practicable of any Claim made against the Insured.

All notices under any provision of the policy shall be put in writing and given by courier, certified mail or fax properly addressed to the appropriate party. Any notice under or in connection with this policy that relates to a Claim or possible Claim shall be given to the appropriate Zurich branch office, addressed as follows:

Zurich Australian Insurance Limited
Attention: Specialties, Claims Manager
General Insurance

All other notices shall be given to the specialties underwriter at the appropriate Zurich branch office. Notice shall be deemed to be received and effective upon actual receipt thereof by the addressee.

Subrogation

5.8 If any payment is made under this policy in respect of a Claim, the Insurer shall be subrogated to all rights of recovery available to the Insured to the extent of such payment, and shall be entitled to first call upon any money received pursuant to such rights and to prosecute such rights in the name of the Insured, who shall in addition render all reasonable assistance and co-operation to the Insurer.

Section 6 – General Conditions

Alteration to Risk

- 6.1 The Insured shall give to the Insurer notice in writing as soon as practicable of any material alteration to the risk during the period of cover. A material alteration to the risk includes, without limitation:
- (a) activities that are materially different from those declared in the proposal;
 - (b) activities outside the normal activities of the Profession;
 - (c) insolvency in relation to any Insured;
 - (d) any loss of or conditions imposed upon any licence or other authority required by the Insured to practice the Profession.

Assignment

- 6.2 This policy and any rights under it shall not be assigned without the prior written consent of the Insurer.

Authorisation

- 6.3 The Insured authorise the legal entity specified in the Schedule to act on behalf of all persons and entities comprising the Insured with respect to the giving and receiving of any notice under or in connection with this policy, the payment and return of premium and the negotiation, agreement to and acceptance of endorsements.

Cancellation / termination

- 6.4
- (a) The Insured may cancel this policy by giving notice in writing to the Insurer at any time.
 - (b) The Insurer may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (as amended), such cancellation to take effect 30 days from the time of receipt of notification by the Insured.
 - (c) After cancellation by the Insured a refund of premium will be allowed pro-rata of 70 per cent of the premium for the unexpired Period of Insurance.
 - (d) After cancellation by the Insurer a refund of premium will be allowed pro-rata for the unexpired Period of Insurance.

Descriptive titles

- 6.5 The titles of paragraphs in this policy are included for descriptive purposes only and do not form part of this policy for the purposes of construction or interpretation.

Goods and Services Tax

- 6.6 The policy has provision for payment of Goods and Services Tax (GST):
- (a) by the Insured in relation to the premium payment;
 - (b) by the Insurer in relation to claim payments depending on the type of claim.

The GST component of a claim will be settled according to the Insured Input Tax Credit (ITC) entitlement.

The Insured must advise the Insurer their correct ITC percentage. Any GST liability arising from the incorrect advice is payable by the Insured.

Limit of Liability and Excess

6.7 The Insurer's total liability toward any and all Insured in respect of all Loss, including Defence Costs, directly or indirectly arising out of or in connection with:

- (a) any single Claim;
- (b) all Claims referable to the Period of Insurance;

shall not exceed the respective Limits of Liability prescribed in the Schedule and shall apply only to the amount by which such Loss exceeds the prescribed amount of the Excess. For the purposes of application of the Limits of Liability and the Excess, all Claims arising directly or indirectly out of or in connection with a single source or originating cause shall be deemed to be a single Claim.

Where the Insurer makes a payment in relation to a Claim which includes payment of part or all of the Excess the Insured shall, within 28 days of being notified by the Insurer, reimburse the Insurer for the amount of the Excess paid by the Insurer.

Policy interpretation

6.8 It is agreed that the proper law of this policy is the law of the Commonwealth of Australia and of the Australian State or Territory in which the policy is issued by the Insurer. The Insurer and the Insured agree to the exclusive jurisdiction of the appropriate Australian Court, in relation to all matters arising under or in connection with it.

Privacy

6.9 Privacy legislation requires Zurich to make the following disclosures before collecting personal information about an Insured person:

- (a) Zurich requires personal information about an Insured person to assess the submission for insurance and to administer the policy;
- (b) Where relevant for this purpose, we may disclose personal information (other than sensitive information such as health information) to the Insured's adviser (and any licensee or broker, he or she represents);
- (c) We will also, where relevant, disclose personal information to our service providers (including loss adjusters, administrators, reinsurers) and to our business partners for this purpose. By submitting the submission, an Insured consents to Zurich and those organisations, collecting and disclosing sensitive information about them;
- (d) A list of the type of service providers and business partners Zurich commonly use is available on request, or on our website - go to www.zurich.com.au and click on the Privacy link on our home page;
- (e) If an Insured does not provide the requested information, the submission may not be accepted, and Zurich may not be able to administer the policy or the Insured may breach the duty of disclosure;
- (f) Zurich may also disclose personal information about an Insured person where we are required or permitted to do so by law;
- (g) In most cases, on request, Zurich will give an Insured person access to the personal information we hold about them;
- (h) An Insured person may contact Zurich by telephone on 132 687, e-mail us at Privacy.Officer@zurich.com.au or in writing to 'The Privacy Officer' at Zurich Australian Insurance Limited, PO Box 677, North Sydney 2059.

Please provide details of the policy number/s where known.

Severability and non-imputation

- 6.10 Where this policy insures more than one party, the application for insurance is construed as a separate application by each Insured. When determining whether coverage is available under this policy:
- (a) any failure by an Insured to comply with the duty of disclosure shall not be imputed to any other Insured, where the other Insured is innocent of and had no prior knowledge of the failure; and
 - (b) for the purposes of the exclusions, no facts pertaining to, conduct of or knowledge possessed by an Insured shall be imputed to any other Insured.

Singular and plural

- 6.11 Except where the context otherwise requires, a reference to the singular includes the plural and vice versa.

Valuation and foreign currency

- 6.12 All premiums, limits, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in Australian currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of Loss 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 as reported in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of Loss is due, as the case may be.



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