



# **Construction Professionals Professional Indemnity and Broadform Liability Policy Wording**

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## General Information & Important Notices

### How We protect your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect Your personal information, and sometimes sensitive information about You as well (for example, Your claims history). We will collect this information directly from You where possible, but there may be occasions when We collect this information from someone else.

We will only use Your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us Your information, but this may affect Our ability to provide You with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

By applying for, using or renewing any of Our products or services, or providing Us with Your information, You agree to this information being collected, held, used and disclosed as set out in this policy.

You can access Our privacy policy at [www.pacificindemnity.com.au/privacy-policy](http://www.pacificindemnity.com.au/privacy-policy)

### General Insurance Code of Practice

We proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code.

Details of the Code of Practice can be found on-line at: [www.codeofpractice.com.au/](http://www.codeofpractice.com.au/)

### Our service commitment

We are proud of Our service standards and support the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of

Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact Us if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives;
- Our claims representatives; or
- Our decision on Your claim.

Our staff will help You in any way they can. If they are unable to satisfy Your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our Internal Dispute Resolution Department.

Details of Our internal dispute resolution process are available from Our office.

### Intermediary Remuneration

We may pay remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary.

### We

For the purposes of this **General Information and Important Notices**, 'We' means Pacific Indemnity Underwriting Solutions Pty Ltd ABN 14 606 511 639 - on behalf of Insurance Australia Limited ABN 11 000 016 722 (IAL).

### About Pacific Indemnity

Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639, specialises in Professional Risk insurance (including Professional Indemnity Insurance, Malpractice Insurance, Information & Communication Technology Insurance, Management Liability Insurance and similar products).

In arranging this insurance, Pacific Indemnity is acting on behalf of the insurer, Insurance Australia Limited ABN 11 000 016 722. IAL's Australian Financial Service Licence number is 227681.

Pacific Indemnity's Australian Financial Service Licence number is 480863.

### Wholesale only

Pacific Indemnity Underwriting Solutions Pty Ltd is only licensed to offer or provide General Insurance products or services which do not include any of the following types of General Insurance (which are defined by the Corporations Act as "retail"): Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit, Travel, Personal or Domestic Property, Medical Indemnity or any other kind of General Insurance which has been prescribed by the Corporations Regulations.

## Policy A - Professional Indemnity Policy

### Insuring Clauses

We will pay to or on **You** behalf all awards of damages and awards of claimants costs against **You** resulting from any **Claim** for **Civil Liability** arising from the provision of **Professional Services** by or on behalf of the **Named Insured**.

We do this only for **Claims** which are

- (i) made against **You** during the **Period of Insurance**; and which
- (ii) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**; and which
- (iii) Arise out of an act error or omission after the Retroactive Date if any specified in the **Schedule**.

We will also pay on **You** behalf (and as needed advance) **Claim Investigation Costs**. We are not however obliged to defend, or to continue to defend, any **Claim** or pay, or continue to pay, any **Claim Investigation Costs**, once the **Policy Limit** (or the **Sub-Limit**, as the case may be) has been exhausted.

All **Cover** provided under this **Policy** is subject to the Insuring Clauses and all the **Policy** terms, conditions, exclusions and limits contained in or endorsed on this **Policy** and the payment of the Gross Premium stated in the **Schedule**.

### Insuring Clause clarifications

For clarity, **Civil Liability Covered** by this **Policy** includes (but is not necessarily limited to) liability arising from the provision of **Professional Services** for the following:

- Breach of professional duty
- Breach of confidentiality
- Breach of privacy
- Breach of fiduciary duty
- Defamation
- Loss of or damage to **Documents** (to the full policy limit)
- Liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible – vicarious liability
- **Intellectual Property** breaches
- Breaches of the Competition and Consumer Act and the Fair Trading Acts (Australian & New Zealand)
- Misleading and deceptive conduct breaches under Australian Securities and Investment Commission Act 2001
- Vicarious Liability
- Unintentional breaches of Warranty of Authority

## Extensions

Each of the following Extensions automatically applies unless otherwise stated in the endorsements or the **Schedule**. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the **Policy Limit** of this **Policy** unless otherwise expressly stated.

### Compensatory Penalties

Notwithstanding the Fines & Penalties Exclusion, **We Cover Claims** for compensatory civil penalties. **Our** total liability for the payment of **Compensatory Civil Penalties** under the **Policy** shall not exceed \$250,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

However, **We** will not be liable to **Cover You** for any **Compensatory Civil Penalty**:

- a) for which **We** are legally prohibited at law from indemnifying **You**;
- b) based upon, attributable to or in consequence of any:
  - (i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - (ii) gross negligence or recklessness; or
  - (iii) any requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

A separate **Excess** will apply to each Compensatory Civil Penalty payable under this extension.

### Costs of responding to third party claims for equitable relief.

In so far as an action for equitable relief is brought against **You** (arising from the provision of **Professional Services** by or on behalf of the **Named Insured**), then **We** will also pay on **Your** behalf (and as needed advance) the **Claim Investigation Costs** of any such action.

### Enquiries – legal costs Cover – including for regulatory, licensing, disciplinary or coronial enquiries

For those **Enquiries** of which **You** first become aware (and of which **We** are told about in writing as soon as reasonably possible) while this **Policy** is in force, **We Cover You** and **Your Employees** up to \$250,000 in the aggregate in respect of **Claim Investigation Costs** for **Your** representation at any such **Enquiry**. This **Cover** does not extend to paying **Your** regular or overtime wages, salaries or fees, or those of **Your Employees**.

### Court Attendance Costs

For any person described in a) and b) below who is required to physically attend at Court for the purposes of giving evidence as a witness in connection with a **Covered Claim**, then it is

agreed that **Claim Investigation Costs** will include the following payments, per day on which attendance in court is required:

- a) Payable to any **Principal** or **Former Principal** - \$500
- b) Payable to any **Employee** - \$250

No **Excess** shall apply to this Section of the **Policy**.

### Public Relations Cover

**We** will pay the reasonable and necessary fees, costs and expenses of a public relations consultant retained by **You** with **Our** prior written consent (which shall not be unreasonably delayed or withheld) to design and implement a **Publicity Campaign** approved by **Us**, which is designed to prevent or mitigate damage to **Your** reputation in consequence of a **Covered Claim** arising from the provision of **Professional Services**.

**Our** total liability for the payment of such fees, costs and expenses of a public relations consultant under the **Policy** shall not exceed a Sub-Limit of \$50,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

Notwithstanding the **Policy** excess specified in the **Schedule**, the **Excess** applicable to the **Cover** provided under this Section is \$1,000 for each and every Publicity Campaign.

### Contractual Liability Defence Costs

Notwithstanding the exclusion for contractual warranties and guarantees within this **Policy**, **We** will **Cover Your Claim Investigation Costs** which **We** consider reasonable and necessary in defending **You** against any **Claim** which:

- a) is made against **You** while this **Policy** is in force; and
- b) **We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- c) arise from an act, error or omission on or after the Retroactive Date as specified in the **Schedule**; and which arise out of:
  - (i) a liability under a contractual warranty, guarantee or undertaking; or
  - (ii) a breach of an indemnity and/or hold harmless term of a written contract;
  - (iii) to the extent that such liability or breach resulted from **Your** act, error or omission in the performance or provision **Professional Services**.

**Our** total liability for the payment of such legal costs and expenses under the **Policy** shall not exceed a **Sub-Limit** of \$100,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

### Claim Prevention and Mitigation Costs (Sub-limited)

**We** will reimburse **You** the direct costs and expenses reasonably and necessarily incurred by **You** with **Our** prior written consent (which will not be unreasonably withheld) in taking reasonable and necessary steps to rectify or to mitigate the effects of any of **Your** acts, errors or omissions done or omitted in the provision of **Professional Services** by or on behalf of the **Named Insured** that would otherwise result in a **Claim Covered** by the **Policy**. Provided always that **You** first discover such act, error or omission during the **Period of Insurance** and immediately notify **Us** of such act, error or omission during the **Period of Insurance**;

**Our** total liability under this extension shall not exceed in the aggregate \$50,000, which is included within and not in addition to the **Policy Limit**.

### Vicarious Liability

The performance of **Professional Services** by **You** includes, for the purpose of this **Policy**, acts, errors or omissions of **Your** agents or consultants while undertaking work pursuant to the contract with **You** which is reasonably incidental to **Your Professional Services** and for which **You** are liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### Continuous Cover

**We Cover You** for any **Claim**, otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** (notwithstanding the exclusion for **Claims** arising from Known Circumstances within this **Policy**) if:

- a) There has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
- b) **We** were **Your** professional liability insurer when **You** first knew of such **Known Circumstance**; and
- c) **We** continued without interruption to be **Your** professional liability insurer up until this **Policy** came into effect; and
- d) Had **We** been notified by **You** of the **Known Circumstance** when **You** first knew of it, **You** would have been entitled to **Cover** under the policy in force at that time but are not now entitled to be **Covered** by that policy, and **You** would (but for the Known Circumstances exclusion of this **Policy**) otherwise be **Covered** under this **Policy**; and
- e) Neither the **Claim** nor **Known Circumstance** have previously been notified to **Us** or to any other insurer.

If **You** were entitled to have given notice under any other policy of insurance but did not (for whatever reason) and hence therefore lost an entitlement to indemnity, then this Continuous **Cover** extension does not apply to provide indemnity under this **Policy**.

**We** may reduce the amount **We** pay out under this provision by the amount of any prejudice **We** may suffer in consequence of any delayed notification to **Us**.

The **Policy Limit** of the **Cover We** provide under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (d) above, or under this **Policy**. The terms of this **Policy** otherwise apply.

### Prior Corporate Entities and Former Subsidiaries - Run-off Cover

This **Policy** extends to **Cover** (as if they were **You**):

- a) corporate entities through which **the Named Insured** previously traded, in the course of the provision of **Professional Services**, provided that those corporate entities are still owned by the **Named Insured**.
- b) any of **Your** former subsidiary companies or other former incorporated entities,

provided that such **Cover** shall only apply in respect of:

- (i) **Claims** arising from the provision of **Professional Services**; and
- (ii) only in respect of acts, errors or omissions which occurred after the Retroactive Date specified in the **Schedule** and prior to the date on which such **Subsidiary** ceased to be **Your Subsidiary** or ceased to trade .
- (iii) This extension of **Cover**, however, is subject to receipt by **Us**, at the time of any such **Claim**, of an express written request from the **Named Insured** under the **Policy** to so extend the **Policy Cover**.

### Mergers & Newly Acquired Subsidiaries

This **Policy** extends to **Cover** entities (practicing in the same professional discipline as **You**) in respect of **Claims** arising from the provision of **Professional Services** of substantially the same type as those **Covered** by this **Policy**, which are merged with or acquired by **You** while this **Policy** is in force. This **Cover** is only an interim **Cover** for a maximum of thirty days from the date of the merger or acquisition (or until the **Policy** expires if that is sooner). **We** may agree to extend this period (subject to additional premium) after receipt of a satisfactory underwriting submission in respect of the merged or acquired entity. The Retroactive Date for such **Cover** is deemed to be the date of the merger with or acquisition by **You** unless **We** otherwise agree in writing.

### Run-off Cover until policy expiry date following mergers, acquisitions and winding up

In the event that a **Run-Off Event** occurs to **You** during the **Period of Insurance** specified in the **Schedule**, then the **Cover** provided by this **Policy** shall continue until the expiry date of this **Policy** but only in respect of any **Claim** otherwise **Covered** by this **Policy** arising from any act, error or omission prior to the date of the **Run-Off Event**.

### Cover to Spouse, domestic partner, Estates, Administrators & Executors and Legal Representatives

If **You**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover Your** spouse, domestic partner, estate, legal representative or assigns, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise have been available to **You**, but only in respect of **Your** acts errors or omissions and not of the spouse, domestic partner, estate, administrator, executor, legal representatives or assigns.

### Non-Renewal Extended Notification Period

- (a) In the event that this **Policy** is not renewed or is cancelled for any reason, other than fraud or non payment of premium, then **You** have until such time that **You** effect another insurance policy which **Covers** substantially the same risk as this **Policy**, either with **Us** or any other insurer(s), or a period of thirty (30) days commencing on the day immediately following expiry/cancellation of this **Policy**, whichever is sooner, to notify **Us** of any **Claims** made against **You** while this **Policy** is in force;
- (b) **Cover** under this extension:
  - (i) does not reinstate or increase the **Policy Limit** or extend the **Period of Insurance**.
  - (ii) will only apply to acts, errors or omissions committed or alleged to have been committed by **You** before the end of the **Period of Insurance** or the cancellation date of this **Policy** where this **Policy** has been cancelled; and
  - (iii) is limited to **Claims** and **Enquiries** arising from an act, error or omission which occurred on or after the Retroactive Date specified in the **Schedule**.

### Joint Venture

- a) If the name of a **Joint Venture** is specified in the **Schedule**, then **We Cover You** for the **Your** individual and joint liability in respect of that **Joint Venture** as otherwise **Covered** by this **Policy**.
- b) If the name of the **Joint Venture** is not specified in the **Schedule** then **We Cover You** only for **Your** acts, errors or omissions arising from the provision of **Professional Services** as otherwise **Covered** by this **Policy**.

## Optional Extensions

Each of the following Optional Extensions will only be **Covered** if specified in the **Policy Schedule** as "included". Further, each of the Extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the **Policy Limit** of this **Policy** unless otherwise expressly stated.

### Employment Practices Liability Cover (Sub-limited)

Notwithstanding an exclusion for **Your** liability as an employer, **We Cover You**, and each **Employee** (subject the **Sub-Limit** specified in the **Schedule** for 'Employment Practices Liability' and subject to the special provisions of this **Policy** for Employment Practices Liability), for **Claims** brought against **You** or an **Employee** (including **Claims** brought by **Your** principals, partners, directors, officers and employees, contract or temporary workers) for that **Loss** which **You** are legally obliged to pay arising from:

- a) discrimination against any **Employee**, former **Employee** or applicant for employment because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- b) wrongful dismissal of any **Employee**;
- c) workplace harassment (whether sexual or otherwise) of an **Employee**;
- d) breach of an implied term of an oral or written employment contract;
- e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Employee**;
- f) wrongful refusal to employ a potential **Employee**;
- g) defamation arising from employment related matters;
- h) misleading misrepresentation or advertising as to the terms and conditions of employment;
- i) denial of natural justice to an **Employee** in respect of any issue concerning his or her employment.

If no **Sub-Limit** is specified in the **Schedule** for 'Employment Practices Liability', then no **Cover** is provided by this **Policy** for 'Employment Practices Liability'.

### Fidelity Cover (Sub-limited)

**We Cover You** for any **Fidelity Loss** (see also Fidelity special provisions) where such **Fidelity Loss**:

- a) is sustained by reason of any dishonest or fraudulent conduct of an **Employee**;
- b) is first discovered by **You** during the **Period** of Insurance;
- c) **We** are told about in writing as soon as reasonably practicable during the **Period of Insurance**; and
- d) is caused by dishonest or fraudulent conduct committed by an **Employee** within a period of thirty six (36) months before being first discovered by **You**;

**Cover** is subject to the **Sub-Limit** specified in the **Schedule** for 'Fidelity Cover'. If no **Sub-Limit** is specified in the **Schedule** for 'Fidelity Cover', then no **Cover** is provided by this **Policy** for **Fidelity Losses**.

**You** shall give written notice to **Us** within the **Period of Insurance**, including affirmative proof of any **Fidelity Loss** with full particulars of any **Fidelity Loss**. **You** shall bear the costs and expenses of establishing the nature and extent of the **Fidelity Loss**. **We** will be under no obligation to provide **Cover** until **We** are satisfied that such **Fidelity Loss** has in fact been sustained.

The amount of the **Excess** for 'Fidelity Cover' is specified in the **Schedule**. **You** must also pay this **Excess** when **We** provide **Cover** for **Claim Investigation Costs** for **Fidelity Losses**.

The **Excess** applies to each and every **Fidelity Loss** resulting from each dishonest, fraudulent, malicious or illegal act or omission committed by an **Employee**.

## What is not Covered

**We** do not **Cover You** for or in respect of:

### Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry

- a) Known to **You** at the inception date of this **Policy**; or
- b) Arising from a **Known Circumstance**; or
- c) Directly or indirectly based upon, attributable to, or in consequence of any **Known Circumstance** or known **Claims, Losses, liabilities or Enquiries**; or
- d) Disclosed in the **Proposal** or arising from or associated with facts or circumstances disclosed in the **Proposal**; or
- e) If the **Policy** is endorsed or amended mid term, for any **Claim** or **Covered Claim** or any associated costs that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** or any associated costs would not have been **Covered** by the **Policy** before such amendment/endorsement.

### Foreign Courts

#### Claims:

- a) first brought in or determined pursuant to the laws of, the United States of America or the Dominion of Canada, or their territories or protectorates; or
- b) In respect of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
- c) Where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim, Covered** by this **Policy**.



## Assumed duty or obligation

### Claims:

- a) Which allege a liability under a contractual warranty, guarantee or undertaking (unless the liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) Which arise from circumstances where a right of contribution or indemnity has been given up by **You**; or
- c) Which arise from circumstances where someone has done work or provided services under an arrangement or agreement with **You** which limits any potential right for **You** to receive contribution or indemnity from that person; or
- d) Which arise from any **Civil Liability** which **You** agree to accept in connection with the provision of the **Professional Services** which is more onerous than that which **You** would otherwise have at common or Statute law; or
- e) Which arise from any business not conducted for or on behalf of the **Named Insured** Firm or entity.

## Related parties

**Claims** against any of **You** brought by or on behalf of:

- (i) any other of **You**; or
- (ii) any company in respect of which **You** or any person or party specified in (i) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
- (iii) any trust in respect of which **You** or any person or party specified in (i) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- (iv) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the **Named Insured** Firm or entity.

## Refund of Professional Fees and Trading Debts

### Claims:

- a) For (or calculated by reference to) the refund of professional fees or charges (by way of damages, offset or otherwise); or
- b) For the costs and expenses incurred by or on **Your** behalf in complying with any contractual obligations or making good any faulty product; or
- c) Directly or indirectly arising from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) Related to a liability to pay trading debts, or the repayment of any loan.

## Profit

Any forgone or un-realised profit. In particular, there is no **Cover** under this **Policy** for any component of profit which would have been derived or derivable by **You** from the sale or supply of any goods, services or rights by or on **Your** behalf.

## Insolvency

Liability or loss directly or indirectly arising out of or in any way connected with **Your** insolvency, bankruptcy or liquidation.

## Goods & Workmanship

**Claims** directly or indirectly arising from:

- a) the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by or on **Your** behalf; or
- b) workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by or on **Your** behalf; or from supervision of such workmanship by any of **You**.

## Employers Liability, Directors' & Officers' Liability, Occupier's Liability, Motor, Marine, etc

### Claims:

- a) Directly or indirectly based upon, attributable to or in consequence of **Your** liability as an employer; or
- b) Bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under **Your** direction, control and/or supervision or for whose workplace safety **You** are responsible;
- c) Arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any of **You** against any employee or employment applicant; or
- d) Arising out of or in respect of actual or alleged acts, errors or omissions of any of **You** who is a director or officer of any incorporated body and while acting in that capacity; or
- e) Arising from occupation (or alleged occupation) of land or buildings by any of **You**; or
- f) Arising from or in respect of **Your** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

## Punitive & Exemplary Damages

For punitive, aggravated or exemplary damages or for fines or penalties. Further, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims** or **Covered Claims**.

## Intentional Damage or Loss

- a) Arising from **You** acts, errors, omissions or conduct, or acts, errors, omissions or conduct by a party otherwise entitled to **Cover** under this **Policy**, with the intention (or with reckless disregard for the consequences) of either:
- (i) causing loss, damage or injury (including mental or emotional damage), or
  - (ii) depriving a third party (or another of **You**) of a tangible or intangible asset or thing to which they are entitled;
  - (iii) Arising from any wilful breach of any statute, contract or duty by **You**.

This exclusion does not restrict **Cover** otherwise provided under the **Policy** for vicarious liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible.

## De-Registration

**Claims** arising from acts, errors or omissions by or on **Your** behalf which occurred at a time when a statutory registration or licence (which was required by law in order for **You** to be entitled to practice or provide the **Professional Services**) was not held, was cancelled or suspended or was otherwise not current or valid for the **Professional Services** provided.

## Asbestos

**Claims** which would not have arisen but for the existence of asbestos.

## Radioactivity & Nuclear Hazards

**Claims** arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

## War & Uprisings

**Claims** arising directly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

## Terrorism

**Claims** directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or

- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

## Pollution

**Claims** arising directly or indirectly from any discharge, dispersal, release or permitting **Pollutants** to escape into or upon land, the atmosphere, or any water course or body of water by **You** or at **Your** direction or on **Your** behalf (**Pollution**). This exclusion however will not apply if the **Pollution** results from an error or omission in design and/or advice and/or specification in the provision of the **Professional Services** by **You**, or on **Your** behalf.

## Limits & GST

**Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same or interrelated acts, errors or omissions. For the purposes of this **Policy**, all such **Claims** shall be deemed to have been made against **You** in the earliest **Period of Insurance** in which such a **Claim** is first made against **You** (or during which **You** first become aware of facts that might give rise to a **Claim**).

Where the same **Claim** is made against more than one of **You** then the limit is not increased by reason of the number of persons against whom the **Claim** is made.

## Aggregate Policy Limit

Subject to the above and the following qualifications, **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy**.

## Aggregate Limit qualifications

If there is other insurance **Cover** available to **You**, then **Cover** in excess of one **Policy Limit** (up to a maximum of twice the **Policy Limit**) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not **Covered** by such insurance.

## Limit of Cover for Claim Investigation Costs

Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are payable in respect of that **Claim** in addition to the **Policy Limit** but only up to an amount equal to the **Policy Limit**. In this case, the aggregate amount **We** pay in total for **Claim Investigation Costs** for or in respect of all **Claims Covered** by this **Policy** does not exceed an amount equal to twice the **Policy Limit**.

## Sub-Limits

If this **Policy** or the **Schedule** indicates any **Sub-Limits** for specific types of **Cover** under this **Policy**, then the applicable **Sub-Limits** and not the **Policy Limit** apply only to these **Claims**. These **Sub-Limits** are included within and not in addition to the **Policy Limit**.

## GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that **You** are entitled to claim an Input Tax Credit for a payment required to be made by **You** as an **Excess**, then the amount of the **Excess** shall be net of **Your** entitlement to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** are, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** 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 other supply.

## Claim Conditions

### Investigation, defence and settlement of Claims

#### We must be told about Claims

**You** must tell **Us** in writing about any **Claims** or losses as soon as possible and while this **Policy** is in force. If this is not done the **Your** right to **Cover** under this **Policy** may be affected.

#### Claims co-operation

Each of **You** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen **Your** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **Covered** by this **Policy**;
- b) promptly give to **Us** all the help and information that **We** may reasonably require to:
  - (i) investigate, mitigate and defend a **Claim** or loss; and
  - (ii) determine **Our** liability under this **Policy**.

#### We can protect Our position

When **We** receive a notification of a **Claim**, or **Covered Claim**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any of **You** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

#### We can manage the Claim (or Covered Claim) on Your behalf

**We** can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in **Your** name; and
- b) claim in **Your** name, any right that **You** may have for contribution or indemnity.

#### You must not admit liability for or settle any Claim (or Covered Claim)

**You** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any **Claim Investigation Costs** without first obtaining **Our** written consent. If **Our** prior written consent is not obtained, **Your** right to **Cover** under this **Policy** may be affected.

#### Your right to contest

If **You** elect not to consent to a settlement that **We** recommend **You** and want to contest or continue the dispute or legal proceedings, then **We** will only **Cover You** (subject to the **Policy Limit**) for:

- (i) the amount **We** could have settled the matter for; less
- (ii) the relevant **Excess** specified in the **Schedule**; plus
- (iii) the **Claim Investigation Costs** calculated to the date **You** elected not to consent to the settlement.

#### Senior Counsel

Unless a Senior Counsel, that **We** and **You** both agree to instruct, advises that the **Claim** or **Covered Claim** should be contested, then neither **We** nor **You** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.

In formulating his or her advice, Senior Counsel must be instructed to consider the economics of the matter, having regard to but not limited to, the:

- (i) the damages and costs likely to be recovered; and
- (ii) the likely costs of defence; and
- (iii) **Your** prospects of successfully defending the **Claim** or **Covered Claim**.

The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.

If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then **You**:

- (i) cannot (subject to the provisions herein under the heading "Your Right To Contest") object to the settlement; and
- (ii) must immediately pay the relevant **Excess** specified in the **Schedule**.

#### Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim** (or **Covered Claim**), is taken to be:

- (i) a payment to settle a **Claim** (or **Covered Claim**); and in addition,
- (ii) a payment for the purpose of calculating the total of all **Claims** (or **Covered Claims**) under this **Policy**.

#### Recovering money from Employees

**We** must not recover any amount paid out in respect of a **Claim** or loss under this **Policy** from any of **Your Employees** or former **Employees** unless the **Claim** (or **Covered Claim**) arose from dishonest, fraudulent, criminal or malicious acts or omissions of such **Employee** or former **Employee**.

#### Offsetting of costs & expenses You owe Us against what We owe You

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then **You** must pay whatever amount is above that liability immediately **We** ask for it.

**We** can offset that payment due from **You** against (and deduct that amount from) any amount **We** must pay to or on behalf of **You** under this **Policy**.

#### The Excess

- (i) **We** only provide **Cover** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess** specified in the **Policy Schedule**.
- (ii) There is no **Excess** for **Claim Investigation Costs** when **We** **Cover** an **Insured** for this **Covered Claim**.
- (iii) only one **Excess** is payable for all **Covered Claims** or losses **Covered** by this **Policy** arising from the one act, error or omission.
- (iv) in the event of a **Claim**, **Covered Claim** or loss arising from separate acts, errors or omissions, then one **Excess** shall apply in respect of each such **Claim**, **Covered Claim** or loss.

#### Advancement of Claims Investigation Costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all reasonable and necessary **Claims Investigation Costs** provided that:

- a) **We** have not already denied indemnity under the **Policy**; and
- b) **Our** written consent is obtained prior to **You** incurring such **Claims Investigation Costs** (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **Claims Investigation Costs** paid under this provision from **You**, in the event and to the extent that:

- (a) **You** make an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
- (b) it is subsequently established, directly or indirectly, by admission, judgment or other final adjudication, that **You** were not entitled to **Cover** under this **Policy**.

#### Allocation

If a **Claim** includes both matters which are **Covered** and matters which are not **Covered** by this **Policy**, then both **You** and **We** will allocate (based upon **Your** relative legal and financial exposures to matters **Covered** and matters not **Covered** by this **Policy**) any amounts which have been incurred by or on **Your** behalf.

If both **You** and **We** cannot agree on an allocation of such amounts incurred by or on **Your** behalf then:

- (i) **We** will advance such portion of the **Defence and investigation Costs** which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You and Us** or is arbitrated in accordance with this provision.
- (ii) **We** may, in **Our** sole discretion, pay amounts (other than amounts for **Claim Investigation Costs**) which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You and Us** or is arbitrated in accordance with this provision or judicially determined.
- (iii) if **We** are requested by **You**, **We** will submit a dispute between **You and Us** regarding the allocation of amounts for determination by arbitration. Subject to agreement between **You and Us**, the arbitration panel will consist of one arbitrator selected by the President for the time being of the Victorian Law Society. The costs of arbitration undertaken in accordance with this provision shall be borne equally by **You and Us**.
- (iv) any allocation of damages, **Claim Investigation Costs** or other amounts which are mutually agreed upon between **You and Us** or arbitrated in accordance with this provision will be applied retroactively to such amounts notwithstanding any prior payment or advancement, as the case may be, to the contrary.

- (v) any allocation or advancement of **Claim Investigation Costs** will not apply to or create any presumption with respect to the allocation of amounts in respect of a **Claim**, other than in respect of **Claim Investigation Costs**.

#### Disclosure of information to Us in respect of the Cover and the Claim (or Covered Claim)

The solicitors instructed by **Us** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information that they may receive in that capacity, wherever and from whomsoever they obtain it and notwithstanding that they may also be representing **You** in respect of the notified circumstance / **Covered Claim**. By claiming under this **Policy**, **You** (and any person entitled to indemnity under this **Policy**) authorise such solicitors to disclose this information to **Us**.

## Additional Special Provisions for Dishonesty and Fraud

In respect of any **Claim** arising from fraud or dishonesty which involves theft or misappropriation of money, then **We** only provide **Cover** if:

- (i) **You** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
- (ii) all cheques prepared on that trust account are required to be signed by a **Principal** or two authorised people;
- (iii) all electronic fund transfers are required to be authorised by a **Principal** and accounts which are accessible on line are reviewed at least weekly.

**You** must take and continue to take all reasonable precautions to prevent any **Claim** arising from fraud or dishonesty and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen a **Claim** arising from fraud or dishonesty or a **Fidelity Loss**.

**We** deduct from any money **We** pay for a **Claim** or loss arising from fraud or dishonesty or **Fidelity Loss**:

- (i) the amount of any money which **You** would have paid to the fraudulent, dishonest, criminal or malicious person the subject of **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
- (ii) the amount of any money of, or to which the person referred to in paragraph (a) above is entitled, which **You** hold (if **We** can do so by law).

Notwithstanding express **Cover** extensions for vicarious liability arising from fraud or dishonesty of employees and for **Fidelity Loss**, there is no **Cover** under this **Policy** to any person or entity the subject of **Cover** under this **Policy**, for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions or breach of fiduciary duty of which:

- (a) any of **You** had knowledge, or had reason to suspect, at or prior to the time of such acts or omissions; and
- (b) failed to take any reasonable action to prevent.

There is no **Cover** under this **Policy** for any **Claim** or **Fidelity Loss** arising from or related to or which involves any dishonest, fraudulent, criminal, malicious acts, errors or omissions or breach of fiduciary duty other than pursuant to the express **Cover** extensions for vicarious liability arising from fraud or dishonesty of employees and for **Fidelity Loss** of this **Policy**.

## Additional special provisions for Fidelity Cover

**We** do not **Cover**:

- a) any **Fidelity Loss** sustained outside of Australia or New Zealand or any **Fidelity Loss** arising directly or indirectly from any loss sustained outside of Australia or New Zealand.
- b) any **Fidelity Loss** the existence of which has only been established by profit and loss figures or by inventory calculations (including stock takes).
- c) any costs incurred by **You** in re-writing, amending or re-installing **Your** computer programs or systems.
- d) any consequential loss arising from any dishonest or fraudulent acts or omissions of any **Employee**.
- e) any **Fidelity Loss** caused by or contributed to by an **Employee** who was not employed by **You** when the act or omission which caused or contributed to the loss occurred.
- f) any **Fidelity Loss** caused by or contributed to by **Principals** or **Former Principals**.
- g) any loss arising from default under a loan or any type of credit offered to or by **You**.
- h) any **Fidelity Loss** arising directly or indirectly from any dishonest or fraudulent acts or omissions which the **Named Insured**, a **Principal** or any **Former Principal** had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take all reasonable action to prevent.
- i) any **Fidelity Loss** incurred by or on behalf of **You** in respect of which any of the **Named Insured**, **Principals** or **Former Principals** committed or condoned any such dishonest, fraudulent, criminal or malicious acts or omissions.
- j) any **Fidelity Loss** first discovered prior to the commencement of the **Period of Insurance** or first discovered after the expiration of the **Period of Insurance**.
- k) any **Fidelity Loss** arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission by any shareholder who at the time of committing such acts had direct or indirect ownership of or control over 5% or more of the voting share capital of the **Named Insured**.

- l) any **Fidelity Loss** arising directly or indirectly from the voluntary giving or surrendering of money, negotiable instruments, bearer bonds or coupons, stamps bank or currency notes unless such loss is sustained by reason of any dishonest or fraudulent act or omission of any **Employee**.
- m) any loss arising directly or indirectly from the dissemination of or accessing any confidential information including but not limited to patents, trademarks, copyrights, trade secrets, computer programs, or customer information.
- n) any loss arising directly or indirectly from any kidnap, ransom or extortion.

For the purposes of this **Policy**, '**Fidelity Loss**':

- (i) means direct financial loss suffered by **You** which is caused by the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or other property owned by **You**;
- (ii) does not include **Your** wages, salaries, or other remuneration benefits or entitlements.

## Additional Special Provisions for Employment Practices Liability Cover

In relation to **Cover** for Employment Practices Liability only:

'**Loss**' means the amount payable in respect of a **Claim** made against **You** and any of **Your Employees** under a contract of service and shall include damages, judgments, settlements, interest, costs, defence costs and back pay where reinstatement by a court or tribunal is ordered. **Loss** excludes any amount which **You** are or were required to pay pursuant to an express obligation imposed under a contract of employment, employment agreement, or pursuant to statute, award or otherwise.

### Special Exclusions

**We** do not **Cover** any of the following **Claims** (or losses or liabilities) or legal proceedings or any associated costs:

- (a) **Strikes, lock-outs etc**

**Claims** brought about by, contributed to by, or which involve acts committed during or in connection with any industrial dispute (whether between employer and **Employee** or between **Employees** or their unions or generally), strike, picket, lock-out, go slow or work to rule action;

- (b) **Insolvency**

**Claims** brought after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, or trustee administering a compromise or scheme of arrangement of or in respect of **You** but this exclusion is not to apply to **Claims** notified prior to the appointment;

- (c) **Workers Compensation/Occupational Health and Safety Legislation**

**Claims** brought about by, contributed to by or which involve claims arising under, or pursuant to, or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation;

- (d) **Bodily Injury**

**Claims** arising from or which involves bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person;

- (e) **Physical Modifications to Premises**

**Claims** for the cost of physical modifications to premises, plant or equipment owned or occupied by **You**;

- (f) **Unfair Contract Claims**

- (i) **Claims** or proceedings for or in respect of a contract of employment alleged to be unfair; or
- (ii) the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.

## General Provisions

### Premium Payment

The **Cover We** provide in this **Policy** is subject to full payment of the Gross Premium as stated in the **Policy Schedule**. If full payment of the Gross Premium is not made, there is no **Cover**.

### Cover Beneficiaries

In so far as **Cover** is extended under this **Policy** to individuals and entities who are not a contracting party under this **Policy**, such **Cover** is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to **Us** of the **Claim** or **Covered Claim**:

- (i) to be bound by the terms, conditions, exclusions and limits of this **Policy**;
- (ii) To be bound by obligations of utmost good faith as if they were a contracting party; and
- (iii) to be liable individually, and together with **You**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

### Loss Prevention

**You** shall, as a condition to **Cover** under this **Policy**, take

all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Claim** or loss which may be **Covered** under this **Policy**.

### Other Insurance Which May Cover The Risk

**You** must immediately advise **Us** in writing of any insurance already affected or which may subsequently be affected **Covering**, in total or in part and whether absolutely or contingently, the Liability, **Claim**, Loss or **Claim Investigation Costs**, or any part of them, **Covered** by this **Policy**.

### Material Change in the Risk

**You** must immediately advise **Us** in writing of any material change in the risk **Covered** by this **Policy**.

### The Proposal – Severability and Non-imputation

The **Proposal We** were given by or on **Your** behalf before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person or entity **Covered** under this **Policy**.

If there is any incorrect fact or misstatement in the **Proposal** that relates to one of **You** who is a natural person then, for the purposes of this **Policy**, **We** do not attribute it to any other of **You** who was not aware of the incorrect fact or misstatement.

### Authority to accept notices & to give instructions

The persons or entity first listed as the **Named Insured** in the **Schedule** is appointed as agent of:

- a) each of **You**; and
- b) any person or entity who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**) in all matters relating to this **Policy**, and to **Claims** or **Covered Claims** which are (or are to be) **Covered** by the **Policy**.

In particular (but without limitation) the person or entity first listed in the **Schedule**, as the **Named Insured**, is the agent for the following purposes:

- (i) to give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- (ii) to accept endorsements or other notices provided for in this **Policy**; and
- (iii) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- (iv) to consent to any settlement that **We** recommend; and
- (v) to do anything that **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claims**; and
- (vi) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

### De-registration

**You** must tell **Us** immediately in writing if **Your** statutory registration or licence, (which you are legally required to hold to provide **Professional Services**) is cancelled, suspended or terminated or has had conditions imposed during the **Period of Insurance** specified in the **Schedule**.

### Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

### Law of the Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued (which is specified in the **Schedule**). The courts of that place have jurisdiction in any dispute about or under this **Policy**.

### Territorial & Jurisdiction Limits

**Cover** under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our Cover** is restricted in accordance with the **Foreign Courts** exclusion in this **Policy**.

### Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** issued by **Us**.

## Cancelling the Policy

### You Can Cancel the Policy

**You** are entitled to cancel this **Policy** from the date **We** receive a written request to cancel the **Policy**, provided that any such cancellation is subject to the following terms:

- a) If a **Claim** has been paid under the **Policy** or if you have notified a **Claim** or facts which may give rise to a **Claim** under the **Policy** then no return premium is payable.
- b) If there has been no **Claim** made or notified under the **Policy** then **We** will be entitled to retain premium for pro-rata 'time on risk' subject to a minimum administration charge of \$250 plus applicable statutory charges. (Note stamp duty for a mid term cancellation may not be refundable in some states).

### We can cancel the Policy

- a) **We** may cancel this **Policy** at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to **You** of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to **You** personally, or post it by certified mail (to **Your** broker or to the address **You** last gave

- Us**). Proof that **We** mailed the notice is sufficient proof that **You** received the notice.
- c) Under Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at any time where:
- (i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
  - (ii) it is an interim contract of general insurance.

After cancellation pursuant to this Clause, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties, unless any of **You** have made a fraudulent claim under the **Policy**.

## How to read this Insurance Policy

### (a) Words with special meanings

Some of the words in this **Policy** wording have special meanings. These meanings can be found in Definitions. If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Policy Schedule**.

### (b) Policy Interpretation

Except where the Context otherwise requires it:

- (i) The singular includes the plural and the plural includes the singular
- (ii) If a word or phrase is defined, its grammatical forms have a corresponding meaning
- (iii) Words importing a gender include every other gender

## Definitions

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the **Policy Schedule**.

### Civil Liability

Liability for the compensatory damages, costs and expenses which a civil court orders **You** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which **You** become liable.

### Claim (or Claims)

The receipt by **You** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against **You**; or

- b) any written or verbal demand from a third party claiming compensation against **You**.

### Claim Investigation Costs

The reasonable and necessary legal costs and expenses (other than regular or overtime wages, salaries or fees of any of **You**) incurred by **You** or on **Your** behalf with **Our** prior approval in the investigation, defence or settlement of any **Claim** or **Covered Claim** which is **Covered** by this **Policy** at the time the legal costs and expenses arise.

### Compensatory Civil Penalties

Means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- a) **You** for any civil offence;
- b) **You** for a strict liability offence in connection with a breach of occupational health and safety law or regulation ("OH&S"),

but solely resulting from the conduct of the **Professional Services**.

### Cover (and 'Covered')

Reference to '**Cover**' and '**Covered**' under this **Policy** shall mean indemnity.

### Covered Claim

The term **Covered Claim** means the:

- a) **Claims**, liabilities, losses, costs; or
- b) facts which may give rise to a **Claim**

which **We** may **Cover** or agree to **Cover** under this **Policy**.

### Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include:

- a) loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system.
- b) Normal wear and tear or the action of insects or rodents or other gradual process.
- c) Documents lost, damaged or mislaid outside of Australia or New Zealand



## Employee

A natural person who is not a **Principal**, but who is or was, at the time the relevant act, error or omission giving rise to the **Claim**, a person who:

- a) is a party to a contract of service with the **Named Insured** and is or was remunerated by **You** for that service; or
- b) is neither a party to a contract of service with the **Named Insured**, nor an independent contractor, but a party to a contract for services with the **Named Insured** for the provision of services to **You** for reward; or
- c) a volunteer worker,
- d) a student

and in respect of (a), (b), (c) and (d) above is (or was) at the time of the act, error or omission which gave rise to the **Claim** under **Your** direct control and supervision in the provision of **Professional Services**.

## Enquiry (or Enquiries)

Any legal or quasi legal enquiry including coronial enquiry (into a matter arising out of the provision of **Professional Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which **You** are legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over **You** or any of **You** (either by reason of a statutory power or by reason of **Your** membership of a professional association which has the power to discipline its members.

## Excess

The part **You** must pay of each **Covered Claim**.

## Former Principal

A person who has been, but is no longer:

- a) a **Principal** of **You**; or
- b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously conducted the **Professional Services** which is now being conducted by the **Named Insured**.

## Intellectual Property

Copyright, Design, Patent, Trade Mark or Moral Right, including false attribution of authorship (under the Copyright Act 1968 Cwlth).

## Joint Venture

An undertaking (regardless of what it is called) which **You** carry on together with someone else who is not otherwise **Covered** under this **Policy**.

## Known Circumstance

Any fact, situation or circumstance which:

- a) any of **You** was aware of at any time before this **Policy** began or before this **Policy** was amended/endorsed; or
- b) a reasonable person in **Your** professional position would have thought, at any time before this **Policy** began or before this **Policy** was amended/endorsed,

might result in someone making an allegation against any of **You** in respect of a liability or loss that might be **Covered** by this **Policy** or any amendment or endorsement of this **Policy**.

## Named Insured

Means any person or entity expressly identified in the **Policy Schedule** as the **Named Insured**

## Period of Insurance

The **Period of Insurance** specified in the **Policy Schedule** – being the period between the inception date of this **Policy** and the expiry date of this **Policy** at 4.00 PM. The time being determined at the place where the **Policy** was issued.

## Policy

The insurance contract made up of:

- a) this **Policy** document;
- b) the **Schedule** to this **Policy**; and
- c) the endorsements, if any, contained or referred to in the **Policy Schedule**.

## Policy Limit

The **Policy limit** specified in the **Policy Schedule**.

## Pollutants

**'Pollutants'** shall mean any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalines, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

## Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is **Covered** by this **Policy**.

## Professional Services

The Professional Services undertaken by or on **Your** behalf and which are specified in the **Policy Schedule** as **Covered** by this **Policy**. The performance of **Professional Services** by **You** includes, for the purpose of this **Policy**, acts, errors or omissions of **Your** agents or consultants while undertaking work which is reasonably incidental to the conduct by **You** of the **Professional**

**Services** and for which **You** are liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### Proposal

The written **Proposal** form (the date of which is specified in the **Schedule**) together with any other material which was given to **Us** by or on **Your** behalf, and relied on by **Us** to effect this **Policy**.

### Publicity Campaign

Means a publicity and/or public relations campaign designed and implemented by a public relations consultant.

### Run-Off Event

Means any **Named Insured** which, during the **Policy Period**, ceases to exist or operate, or which is disposed of or merged with or acquired by another entity.

### Schedule

The **Schedule** to this **Policy** wording, which is issued by **Us**

### Sub Limit(s)

The limit of **Our** insurance **Cover** for specified exposures as specifically set out within the **Policy** wording or as specified in the **Schedule** under '**Sub-Limits**' and which is included within and not in addition to the **Policy Limit**.

### Subsidiary

Any company or other incorporated entity which, at the commencement of the **Period of Insurance**, and by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the **Policy Schedule**.

### Terrorism

**Terrorism** includes any act, or preparation in respect of action, or threat of action designed to influence the government, whether de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

### You

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the **Schedule** as a **Named Insured** and each current or **Former Principal** of any such firm or incorporated body; and
- b) any entity which is engaged in the provision of **Professional Services** and which is created and controlled, while this **Policy** is in force, by anyone identified in the **Schedule** as a **Named Insured**; and
- c) anyone who becomes a **Principal** of the **Named Insured** while this **Policy** is in force (but only in respect of work undertaken for or on behalf of the **Named Insured** firm or incorporated body).
- d) Any person, firm or incorporated body who is entitled to **Cover** under the terms of this **Policy** (as a beneficiary).

### We or Us or Our

Pacific Indemnity Underwriting Solutions Pty Ltd  
**ACN 606 511 639** – on behalf of Insurance Australia Limited ABN  
11 000 016 722.

## Policy B - Broadform Liability Policy

### The Cover We provide

We will pay to or on Your behalf all sums provided by the Policy which You shall become legally liable to pay as compensation for Personal Injury, Property Damage or Advertising Liability caused by an Occurrence during the Period of Insurance within the Geographical Limits as specified in the Policy and happening in connection with Your Business.

All **Cover** provided under this Policy is subject to the Insuring Clauses and all the Policy terms, conditions, exclusions and limits contained in or endorsed on this Policy and the payment of the Gross Premium stated in the **Schedule**.

#### Supplementary Payments

We will pay in addition to the applicable Policy Limit:

- a) all expenses incurred by Us, all costs taxed against You in any suit We defend, and all interest on the entire amount of any judgement which occurs after the entry of the judgement and before We have paid or tendered or deposited in Court that part of the judgement which does not exceed the limit of Our liability thereon;
- b) reasonable expenses incurred by You at Our request in assisting Us in the investigation or defence of any claim but excluding loss of earnings.
- c) expenses incurred by You for the first aid to others at the time of an Occurrence for Personal Injury **Covered** by this Policy;

We shall have the right and duty to defend any suit against You seeking compensation on account of such Personal Injury or Property Damage or Advertising Liability even if the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as we deem expedient. We shall not be obliged to pay any claim or judgement or to defend any suit after We have paid the Policy Limit.

#### Limit of Liability

Our liability in respect of any one Occurrence shall not exceed the Policy Limit stated in the **Schedule** for Public Liability, Products Liability and Advertising Liability. All Personal Injury, Property Damage and Advertising Liability arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence and deemed to occur at the time of the first relevant event. Our total aggregate limit during any one Period of Insurance for all claims arising out of Products Liability and Advertising Liability shall not exceed the Policy Limit. Provided that the Policy Limit in respect of Occurrences in the United States of America or Canada or their protectorates or territories will be inclusive of Supplementary Payments and will apply in the aggregate to all claims in any one Period of Insurance.

#### Geographical Limits

This Policy applies in respect of Occurrences anywhere in the world but does not apply to or insure any liability or claims arising from or in respect of:

- a) the Business carried on by You at or from any premises situated in the United States of America or Canada or their respective territories and protectorates ; or
- b) any contract entered into by You under the terms of which work is to be performed in the United States of America or Canada; or
- c) any exports by You, Your agents or servants to the United States of America or Canada.

### What is Not Covered

We shall not be liable to indemnify You in respect of:

#### Employer's Liability

- a) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service, or through the breach of any duty owed to that person, where You:
  - (i) are indemnified or entitled to be indemnified (either in whole or in part) in respect for claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance or similar for Your employees under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
  - (ii) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation.
- b) Liability for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA);
- c) Liability for mental anguish suffered by any person arising out of, or in the course of, that persons employment by or service to You;
- d) Liability for Personal Injury arising out of the harassment, libel, slander, defamation or humiliation of, or discrimination against, any person while in Your service or while employed by You;
- e) Liability of a type in respect of which indemnity previously would have been provided under a policy of insurance arranged in accordance with any workers' compensation legislation or accident compensation legislation, but in respect of which indemnity has been withdrawn or

reduced as a consequence of a change to the scope, terms, provisions, or requirements of such legislation made after the commencement of the current Period of Insurance; and

- f) Any other liability imposed by the provisions of any workers compensation legislation or accident compensation legislation or industrial award, agreement or determination.

This exclusion does not apply to the liability of others assumed by You under a written contract where the contractual liability has been notified and specifically accepted by Us.

### Motor Vehicles

Liability for:

- Personal Injury arising out of the ownership, operation or use of any Vehicle where such Personal Injury occurs in circumstances in which such Vehicle is required by law to have compulsory insurance against such Personal Injury, or where such insurance **Cover** is in force; or
- Property Damage arising out of the ownership, operation or use by You of any Vehicle that is registered.

Provided that Exclusions 6.2 shall not apply to Vehicles whilst being operated or used by You as a Tool of Trade.

### Aircraft and Watercraft

Liability for Personal Injury or Property Damage arising from the ownership, possession, operation, use or legal control by You of:

- a) any Aircraft; or
- b) any Watercraft or vessel exceeding eight (8) metres in length.

### Property in Physical or Legal Control

Liability arising out of or in any way connected with Property Damage to property which You own, lease, hire, is loaned or rented to You, or is otherwise in Your physical or legal control other than:

- a) premises or part of any premises (including the contents of such premises), leased or rented to You, or temporarily occupied by You for the purpose of the Business, This exclusion for "Property in the physical or legal control" does not extend to any liability where You have assumed the responsibility to effect or maintain insurance with respect to any premises referred to In this clause
- b) premises temporarily occupied by You (including the contents of such premises), for the purpose of carrying out work in connection with the Business. This exclusion for "Property in the physical or legal control" does not extend to liability for physical Damage to or destruction of any premises or contents on which You were or are working, if such physical Damage or destruction arises from such work
- c) any other property temporarily in Your possession for the purpose of being worked upon. This exclusion for "Property

in the physical or legal control" does not extend to liability for physical Damage to or destruction of that part of any property on which You were or are working, if such physical Damage or destruction arises from such work

- d) any Vehicle (including its contents, spare parts and accessories while they are in or on a Vehicle), not belonging to or used by You while such Vehicle is in a car park owned or operated by You, provided that You do not operate the car park for reward as a principal part of the Business
- e) Property Damage to any Vehicle temporarily In Your possession for the purpose of parking or removing from a car park such a Vehicle any other property (except property owned by You), temporarily in Your physical or legal care, custody or control subject to a maximum of \$250,000, or other higher amount stated in the **Schedule**, for anyone Occurrence and in the aggregate during any one Period of Insurance.

### Faulty Workmanship

Any liability for the cost of performing, completing, correcting or improving any work done or to be undertaken by You.

### Damage to Your Products

Liability for:

- a) physical injury to or destruction or loss of Your Products or any part of those Products arising out of them or any part of them;
- b) loss of use of any tangible property caused by physical injury to or destruction or loss of Your Products or any part of those Products arising out of them or any part of them.

This Exclusion does not apply to those Products repaired, serviced or treated by You after such Products were originally sold, supplied or distributed by You.

### Product Recall and Repair

Liability for damages claimed for the withdrawal, inspection, repair, replacement or loss of use of Your Products.

### Aircraft Products

Any liability arising out of the selling, leasing, hiring or manufacture and/or supply of parts and/or products that are used with Your knowledge in Aircraft or any aerial device.

### Contractual Liability

Liability for Personal Injury or Property Damage or Advertising Liability to the extent such liability has been assumed under an agreement unless such liability:

- a) would have attached in the absence of such agreement; or
- b) is specifically allowed by Our written endorsement; or

- c) is assumed by You under a warranty of fitness or quality, or is implied by law, in respect of Your Products.

### Agreement Limiting Rights

If You have entered into any agreement which excludes or limits a right which You may have against any party, then, subject to the Insurance Contracts Act, 1984, We will not be liable for any claim under the Policy to the extent of such exclusion or limitation.

### Professional Errors and Omissions Liability

Liability for the rendering of or failure to render professional advice or service by You or error or omission connected therewith, but this Exclusion does not apply to the rendering or failure to render professional medical advice by medical persons employed by You to provide first aid and other medical services on Your premises.

### Libel and Slander

Liability arising out of the publication or utterance of a libel or slander:

- a) made prior to the Period of Insurance; or
- b) made at Your direction with the knowledge of the falsity thereof; or
- c) related to advertising, publishing or printing, broadcasting or telecasting activities conducted by or on behalf of You.

### Fines and Punitive Damages

Liability for fines, penalties, liquidated damages, punitive damages, exemplary damages, or aggravated damages.

### Loss of Use

The loss of use of property which has not been physically damaged or destroyed flowing from:

- a) a delay in or lack of performance by or on Your behalf of any contract; or
- b) the failure of any Information Technology Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You.

This exclusion (b) does not apply to loss of use of other property directly or indirectly caused by, arising out of or in any way connected with the sudden and accidental physical damage to or destruction of any Information Technology Products after such Information Technology Products have been put to use by any person or organisation other than You.

### Pollution

- a) Liability for Personal Injury, Property Damage or Advertising Liability caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or

escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater) but this exclusion does not apply if the actual discharge, dispersal, release or escape:

- (i) is neither reasonably expected nor intended by You; and,
  - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance.
- b) Liability for any costs or expenses incurred in the preventing, removing, nullifying, or cleaning up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance and results in Personal Injury, Property Damage or Advertising Liability and is not otherwise excluded by this Policy; or Provided that Our total aggregate liability during any one Period of Insurance in respect of all claims arising out of such Personal Injury, Property Damage or Advertising Liability or such costs or expenses shall not exceed the Policy Limit stated in the **Schedule**.

### Asbestos

Liability for Personal Injury, Property Damage or Advertising Liability caused by, arising out of, or in connection with, the use or presence of asbestos.

### Nuclear

Liability for Personal Injury or Property Damage of whatsoever nature directly or indirectly caused or contributed to by or arising from ionising radiation, or contamination by radioactivity from nuclear fuel or from any nuclear waste. For the purpose of this Exclusion combustion shall include any self- sustaining process of nuclear fission.

### War

Liability for Personal Injury or Property Damage directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, rebellion, insurrection, military or usurped power.

### Terrorism

Liability for Personal Injury or Property Damage directly or indirectly caused by or contributed to, by, or arising from or happening through or in connection with any act of Terrorism. In accordance with the Terrorism Act 2003 this Exclusion will not apply in respect of an act deemed by the Federal Treasurer to be a declared terrorist incident.

## Internet Operations

- a) Any liability, loss, damage or destruction arising, directly or indirectly, out of or in any way connected with Your Internet Operations.
- b) Part (a) above does not apply to Personal Injury or Property Damage arising out of any material which is already in print in support of Your Products, including but not limited to product use and safety instructions or warnings, and which is also published by You via Your Internet Operations.
- c) Notwithstanding (b) above, We shall not be liable to indemnify You in respect of Personal Injury or Property Damage arising out of any other advice or information published by You, via Your Internet Operations, that is used for the purpose of attracting customers.

## For the purpose of this Exclusion, "Internet Operations" means:

- (i) Use of electronic mail systems by Your employees, including part time and temporary staff and others within Your Business;
- (ii) access through Your network to the world wide web or a public internet site by Your employees including part-time and temporary staff and others within Your Business.
- (iii) access to Your intranet (meaning internal company information and computer resources) which is made available through the world wide web for Your customers or others outside Your Business; and
- (iv) the operation and maintenance of Your web-site.

## Advertising Liability

Liability for Advertising Liability arising from:

- a) offences committed prior to the Period of Insurance;
- b) offences made at the direction of You with knowledge of the illegality or falsity thereof;
- c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- d) incorrect description of the price of Your Products, goods or services; infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of Your Products, goods or services sold, offered for sale or advertised, but this Exclusion does not apply to titles or slogans;
- e) failure of Your Products, goods or services to conform with advertised performance, quality, fitness or durability;
- f) any of You whose business is advertising, broadcasting, publishing or telecasting.

## Product Recall

any costs incurred in withdrawing or recalling any Information Technology Products (including any costs involved in inspecting, repairing or replacing) because of any known or suspected defect or deficiency.

## North American Jurisdiction

- a) legal proceedings brought within the United States of America and/or Canada or any of their territories or protectorates;
- b) the enforcement of any judgment or award obtained within or determined pursuant to the laws of the United States of America and/or Canada or any of their territories or protectorates; or
- c) legal proceedings in which the laws of the United States of America and/or Canada or any of their territories or protectorates are applicable even if only in a limited respect.

This exclusion does not apply to Claims resulting from the acts, errors or omissions of an employee of the Named Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Named Insured outside Australia.

## Other Insurance

Claims or losses for which **Cover** is provided or available under the accompanying ICT/PI policy.

## Claims Provisions

### Claims Control

Notice in writing shall be given to Us as soon as possible of every Occurrence, claim, writ, summons, impending proceedings, circumstance, impending prosecution and/or inquest in respect of which there may arise a liability under this Policy.

- a) **You** shall not without Our written consent make any admission, offer, promise or payment in connection with any Occurrence or claim and We may make such investigation, negotiation and settlement of any claim or suit as We deem expedient.
- b) **You** shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without Our consent and until We have had the opportunity of inspection.
- c) **We** shall have full discretion in the conduct of any proceedings in connection with any claim and You shall give all information and assistance as We may require in the prosecution, defence or settlement of any claim.
- d) In the event of an Occurrence, You shall promptly take at Your expense all reasonable steps to prevent other Personal

Injury, Property Damage or Advertising Liability arising out of the same or similar conditions, but such expense shall not be recoverable under this Policy.

- e) **We** shall be entitled to attend any inquest in respect of which there may arise liability under this Policy.

### Discharge of Liabilities

We may at any time pay to You in respect of all claims against You arising directly or indirectly from the one Occurrence the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by Us which sum or sums would reduce the amount of Our unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment, and notwithstanding anything else to the contrary, We shall relinquish conduct or control of and be under no further liability under the Policy in connection with such claim or claims except for costs charges or expenses recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by Us or by You with Our written consent prior to the date of such payments.

### Reasonable Care and Loss Risk Management

You shall:

- a) take all reasonable precautions to:
- (i) prevent Personal Injury, Property Damage or Advertising Liability;
  - (ii) prevent the manufacture, sale or supply of defective products; and
  - (iii) comply and ensure that Your workers, servants and agents comply with all Statutory Obligations, By-Laws or Regulations imposed by any Public Authority in respect thereof for the safety of persons and property;
- b) at Your own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency You have knowledge of or has reason to suspect.

### Cross Liabilities

Where more than one party comprises You each of the parties shall be considered as a separate and distinct unit and the word You shall be considered as applying to each of You in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in the increase of Our liability under this Policy in respect of any Occurrence or Period of Insurance.

### Subrogation

In the event of payment under this Policy to or on behalf of You, We shall be subrogated to all Your rights of recovery against all persons and organisations and You shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

### Goods and Services Tax

Where We make a payment under this Policy for the acquisition of goods, services or other supply We will reduce the amount of the payment by the amount of any Input Tax Credit You are, 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. Where We make a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of payment by the amount of any Input Tax Credit that You 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 other supply.

## General Provisions

### Alteration of Risk

You must provide Us with immediate written notice of:

- a) every change which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to Your knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be Your knowledge; and
- b) if You does not provide such notification before the happening of an Occurrence giving rise to a claim under this Policy then, subject to the Insurance Contracts Act, 1984, We may refuse to pay a claim, either in whole or in part.

### Inspection and Premium Adjustment

We shall be permitted but not obligated to inspect Your property and operations at any time. Neither Our right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for Your benefit or others, to determine or warrant that such property or operations are safe. We may examine and audit Your books and records at any time during the Period of Insurance and extensions thereof and within three (3) years after the final termination of this Policy, as far as they relate to the subject matter insured. If the first or renewal premium for the Policy or part thereof shall have been calculated on estimates furnished by You, then You shall keep an accurate record containing all particulars relative thereto and shall at all times allow Us to inspect such records. The Named Insured shall within thirty (30) days after the expiry of each Period of Insurance furnish to Us such particulars and information as We may require. The premium for such period shall thereupon be adjusted and any difference paid or allowed to You as the case maybe subject to receipt and retention of any minimum premium charged by Us.

### Other Insurances

If You make a claim under this Policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be **Covered** in whole or in part by any other insurance, then You must advise Us of the full details of such other insurance when making a claim under this Policy. Subject to the Insurance Contracts Act, 1984, We reserve the right to seek contribution from the other insurer(s).

## Insurance Arranged By Principal

If You enter into an agreement with any other party (who for the purpose of this clause is called the "Principal") pursuant to which the Principal has agreed to arrange a policy of insurance which is intended to indemnify You for any loss or liability then We will (subject to the terms and conditions of this Policy) only indemnify You for loss or liability not **Covered** by the policy of insurance provided by the Principal.

## Cover Beneficiaries

In so far as **Cover** is extended under this Policy to individuals and entities who are not a contracting party under this Policy, such **Cover** is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to Us of the Claim or **Covered** Claim:

- (i) to be bound by the terms, conditions, exclusions and limits of this Policy;
- (ii) To be bound by obligations of utmost good faith as if they were a contracting party; and
- (iii) to be liable individually, and together with You, for paying the Excess (or any other payment due to Us under this Policy) in respect of any **Cover** provided to them under this Policy.

## The Proposal – Severability and Non-imputation

The Proposal We were given by or on Your behalf before this Policy commenced, is taken to be a separate Proposal for each natural person or entity **Covered** under this Policy.

If there is any incorrect fact or misstatement in the Proposal that relates to one of You who is a natural person then, for the purposes of this Policy, We do not attribute it to any other of You who is a natural person and who was not aware of the incorrect fact or misstatement at the time it was made.

## Authority to accept notices & to give instructions

The person or entity first listed as the Named Insured in the **Schedule** is appointed as agent of:

- a) each of You; and
- b) any person or entity who is entitled to a benefit under this Policy (when they request **Cover** or suffer a loss under this Policy) in all matters relating to this Policy, and to Claims or **Covered** Claims which are (or are to be) **Covered** by the Policy.

In particular (but without limitation) the person or entity first listed in the **Schedule**, as the Named Insured, is agent for the following purposes:

- (i) to give and receive notice of Policy cancellation, to pay premiums and to receive any return premiums that may become due under this Policy; and
- (ii) to accept endorsements or other notices provided for in this Policy; and

- (iii) to give instructions to solicitors or counsel that We appoint or agree to, and to receive advice from them and to act on that advice; and
- (iv) to consent to any settlement that We recommend; and
- (v) to do anything that We or Our legal advisers think might help with the procedures set out in this Policy for settling and defending Claims or **Covered** Claims; and
- (vi) to give Us information relevant to this Policy, which We can rely on when We decide whether to accept the risk, and set the Policy terms or the premium.

## Premium Payment

The **Cover** We provide in this Policy is subject to full payment of the Gross Premium as stated in the Policy **Schedule**. If full payment of the Gross Premium is not made, there is no **Cover**.

## All Payments in Australian Dollars

All premiums and Claims must be paid in Australian dollars in Australia.

## Law of the Policy

This Policy is governed by the law of the Territory or State where the Policy was issued (which is specified in the **Schedule**). The courts of that place have jurisdiction in any dispute about or under this Policy.

## Insurance Contracts Act

Nothing contained in this Policy shall be construed to reduce or waive either Your or Our privileges, rights or remedies available under the Insurance Contracts Act, 1984 as amended.

## Schedule must be included

This Policy is only legally enforceable if it includes a **Schedule** issued by Us.

# Cancelling the Policy

## You Can Cancel the Policy

You are entitled to cancel this Policy from the date We receive a written request to cancel the Policy, provided that any such cancellation is subject to the following terms:

- a) If a Claim has been paid under the Policy or if you have notified a Claim or facts which may give rise to a Claim) under the Policy then no return premium is payable.
- b) If there has been no claim made or notified under the policy then We will be entitled to retain premium for pro-rata 'time on risk' subject to a minimum administration charge of \$250 plus applicable statutory charges. (Note stamp duty for a mid term cancellation may not be refundable in some states).



## We can cancel the Policy

- a) **We** may cancel this Policy at any time in accordance with the relevant provisions of Section 60 of the Insurance Contracts Act 1984, by giving notice in writing to You of the date from which cancellation is to take effect.
- b) **We** may deliver this notice to You personally, or post it by certified mail (to Your broker or to the address You last gave Us). Proof that We mailed the notice is sufficient proof that You received the notice.
- c) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at any time where:
  - (i) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
  - (ii) it is an interim contract of general insurance.

After cancellation pursuant to this Clause, We will refund the premium for the time remaining on the Policy, less any non-refundable duties, unless any of You have made a fraudulent claim under the Policy.

When the premium is subject to adjustment, cancellation will not affect Your obligation to supply such information as We may require for the adjustment of the premium. Cancellation will not affect Your obligations to pay the amount of adjustment applicable up to the date of cancellation.

## How to read this Insurance Policy

### Policy Interpretation

Except where the Context otherwise requires it:

- a) The singular includes the plural and the plural includes the singular
- b) If a word or phrase is defined, its grammatical forms have a corresponding meaning
- c) Words importing a gender include every other gender.

### Words With Special Meaning

Whenever the following words are used in this Policy in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements in the Policy **Schedule**.

**Advertising Liability** means:

- a) libel, slander or defamation;
- b) infringement of copyright or of title or slogan;
- c) piracy or unfair competition or idea misappropriation under an implied contract;

- d) invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of Your advertising activities or any advertising activities conducted on Your behalf in the course of advertising Your Products, goods or services.

**Aircraft** means any vessel, hovercraft, craft or thing designed to transport persons or property in or through the air or space.

**Business** means the business stated in the **Schedule** and shall include the activities of any canteen, social, sports, welfare and / or child care organisation or first aid, medical, fire or ambulance services.

**Excess** means the amount payable by You in respect to each Occurrence and includes all Supplementary Payments.

**Medical Persons** means medical doctors, medical nurses, dentists and first aid attendants.

**Named Insured** means the entity or natural person specified in the **Schedule** as the Named Insured.

**Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions, which causes Personal Injury or Property Damage or Advertising Liability none of which is expected or intended from Your standpoint.

**Period of Insurance** means the duration of this Policy as stated in the **Schedule**.

**Personal Injury** means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, false imprisonment, malicious prosecution and humiliation;
- c) libel, slander, defamation of character;
- d) wrongful entry or wrongful eviction or other invasion of the right of private occupancy;
- e) assault and battery not committed by or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property,

which occurs during the Period of Insurance.

**Policy Limit** means the amount(s) specified as such in the **Schedule**.

**Policy** means the insurance Policy made up of:

- a) this Policy document; and
- b) the **Schedule** to this Policy; and
- c) the endorsements, if any, contained or referred to in the **Schedule**.

**Products Liability** means Personal Injury or Property Damage:

- a) caused by any defect, or the harmful nature of any of Your Products;
- b) resulting from any defect or deficiency in any direction or advice given at any time or intended to be given by You concerning the use or storage of Your Products.

**Property Damage** means:

- a) physical injury to or destruction or loss of tangible property which occurs during the Period of Insurance and any loss of use of that property resulting there-from; or
- b) loss of use of tangible property which has not been physically injured or destroyed or lost which is caused by physical injury to or destruction or loss of other tangible property which occurs during the Period of Insurance.

**Proposal** Means the written Proposal form (the date of which is stated in the **Schedule**) together with any other material that was given to Us, and relied on by Us to effect this Policy.

**Public Liability** means liability **Covered** by this Policy but does not include Products Liability.

**Schedule** means new Policy **Schedule**, renewal **Schedule** or endorsement **Schedule** issued by Us.

**Terrorism** means an act, which may include but is not limited to an act involving the use of force or violence and/or 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) which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, to fear.

**Tool of Trade** means any vehicle which has a tool or plant forming part of or attached to or used in connection with it while such tool or plant is engaged on a work site, but does not include:

- a) **Vehicles** whilst in transit to or from any worksite; or
- b) **Vehicles** used for transport or haulage.

**Vehicle** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

**Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

**We or Us or Our**

Pacific Indemnity Underwriting Solutions Pty Ltd  
**ACN 606 511 639** – on behalf of Insurance Australia Limited ABN  
11 000 016 722.

**You or Your**

Each of the following is insured under this Policy to the extent set

forth below:

- a) The Named Insured;
- b) All subsidiary companies (now or hereafter constituted) of the Named Insured whose place of incorporation is within Australia and whose business falls within the definition of Your Business.
- c) Any director, executive officer, employee, partner or shareholder of the Named Insured or of any company designated in paragraph (b) above, but only while acting within the scope of their duties in such capacity;
- d) Contractors not being the Named Insured but with whom the Named Insured has entered into a contract for work for the Named Insured, and only in respect of work performed as part of the Business;
- e) Any Principal, not being the Named Insured, but with whom the Named Insured has entered into a contract for work and provided their interests are required to be insured jointly by the Named Insured and then only to the extent required by such contract, and only in respect of work performed as part of the Business.

For the purposes of this endorsement 'Principal' shall mean any person with whom the Named Insured has entered into a written contract or agreement to do any work or provide any services in connection with the Business.

**Your Products** means anything, including any packaging or container thereof (after it has ceased to be in Your possession or control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed by You.