



# Affinity Civil Liability Professional Indemnity Insurance Policy

Professional and financial risk solutions



# Affinity Civil Liability Professional Indemnity Insurance Policy

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# Introduction

Please read the policy carefully to ensure that it meets your requirements. It is written on a claims made and notified basis, which means that, subject to the 'Continuous Cover' clause, it will only respond to claims first made against the insured and notified to the insurer during the policy period (or notified in accordance with the terms of any applicable additional or extended reporting period).

Any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear.

You received important notices about your duty of disclosure, unusual terms in professional indemnity insurance policies and our privacy statement prior to purchasing this policy. The notices are replicated below for your reference. A reference to "you" or "your" in the notices section below includes the Insured.

## Notices

These notices do not form part of the policy.

### Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- ▼ reduces the risk we insure you for; or
- ▼ is common knowledge; or
- ▼ we know or should know as an insurer; or
- ▼ we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### Claims made and notified basis of cover and retroactive date

This policy is issued on a 'claims made and notified' basis. This means that the policy covers claims:

- (a) first made against you during the policy period; and
- (b) you tell us about during the policy period.

Where your policy has an additional or extended reporting period, subject to the terms of the policy, you may have:

- ▼ an additional period to tell us about claims first made against you during the policy period; and/or
- ▼ cover for claims first made against you during the extended reporting period and which you tell us about during the extended reporting period – provided the claims are based on an act, error, or omission alleged to have been committed prior to the expiry of the policy period.

Pursuant to section 54 of the Insurance Contracts Act 1984, if you tell us about claims first made against you during the policy period (or additional or extended reporting period, if applicable), after the policy period and any applicable additional or extended reporting period expires, we may be able to reduce our liability by an amount that fairly represents the extent to which our interests were prejudiced as a result of your delay in notifying us of the claim.

Written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984: If during the policy period, you learn about facts that might lead to a claim and you tell us in writing about these facts as soon as reasonably practicable after you became aware of those facts but before the end of the policy period, we will treat any subsequent claim arising from those facts as though it was made against you during the policy period.

The policy doesn't cover claims or potential claims that you knew about prior to the policy period which would have put a reasonable person in your position on notice that a claim may be made against you. (There are some exceptions to this rule if a 'Continuous Cover' extension applies).

If a retroactive date is applied or shown on the policy schedule, the policy doesn't cover claims resulting from an act or failure to do something before that date.

### Average provision

If your policy provides for 'Costs in Addition' to the limit of indemnity and if a payment in excess of the limit of indemnity available under your policy has to be made to dispose of a claim, the insurer shall only be liable for the percentage of the costs and expenses incurred with the insurer's prior consent that is a proportionate ratio to the amount of indemnity available under this policy.

## Preservation of rights of recovery/subrogation waiver

This policy contains provisions that have the effect of excluding the insurer's liability for a loss or liability incurred due to the insured, entering into:

- (a) any agreement whereby the Insured releases, agrees not to sue or waives or prejudices any rights of recovery;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any agreement or compromise whereby any rights or remedies to which the insurer would be subrogated are or may be prejudiced.

## Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

### Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

### What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

### How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Personal Property Securities Act 2009, Corporations Act 2001, Autonomous Sanctions Act 2011, Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Taxation Administration Act 1953, A New Tax System (Goods and Services Tax) Act 1999 and the Australian Securities and Investments Commission Act 2001, as those laws are amended and includes any associated regulations. We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
  - ▼ information technology providers,
  - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
  - ▼ marketing agencies and other marketing service providers,
  - ▼ claims management service providers,

- ▼ print/mail/digital service providers, and
- ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Australian Financial Complaints Authority or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

#### Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at [www.vero.com.au/privacy](http://www.vero.com.au/privacy), or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

#### How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy.

Please use the contact details in **Contact Us**.

#### Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, obtaining a list of overseas countries or giving us your marketing preferences you can:

- ▼ Visit [www.vero.com.au/privacy](http://www.vero.com.au/privacy)
- ▼ Speak to us directly by phoning us on: 1300 888 073 or
- ▼ Email us at [privacyaccessrequests@vero.com.au](mailto:privacyaccessrequests@vero.com.au)

#### Our complaints handling procedures

We are committed to:

- ▼ listening to what you tell us;
- ▼ being accurate and honest in telling you about our products and services;
- ▼ communicating with you clearly; and
- ▼ resolving any complaints or concerns you have in a fair, transparent and timely manner.

#### How to contact us with a complaint

##### Let us know

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us:

- ▼ By phone: 1300 888 073

▼ By email: [claims@vero.com.au](mailto:claims@vero.com.au)

Complaints can usually be resolved on the spot or within 5 business days.

#### **Review by our Customer Relations Team**

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

▼ By phone: 1300 264 470

▼ By email: [idr@vero.com.au](mailto:idr@vero.com.au)

▼ In writing: Vero Customer Relations Team, PO Box 14180, Melbourne City Mail Centre VIC 8001

Customer Relations will contact you if they require additional information or they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

#### **Seek review by an external service**

We expect our procedures will deal fairly and promptly with your complaint. However, if you remain dissatisfied, there are external dispute remedies such as mediation, arbitration or legal action you may pursue.

# Policy wording

## A. Agreement between policyholder and the insurer

In consideration of the 'Premium' paid as specified in the **Schedule**, the **Policyholder** and the **Insurer** agree that the **Insurer** will provide insurance in accordance with the terms of this **Policy** as set out below.

## B. Where 'prior consent' is required from the insurer

There are some covers under the **Policy**, where the **Insured** will need to obtain the **Insurer's** prior consent, for example, before incurring costs. Where prior consent is required, consent must be obtained from the **Insurer**, unless the extension '7.5 Emergency insured costs and inquiry costs' applies or is otherwise specified in the **Policy**. The **Insurer's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim. However, the **Insurer** may be able to reduce the claim payable by an amount that fairly represents the extent to which the **Insurer's** interests were prejudiced by the failure to obtain prior consent.

## C. Payment of reasonable amounts of any costs, charges, expenses and fees under this policy

A range of different costs, charges, expenses and fees are covered under this **Policy**. Unless otherwise specified in the **Policy**, the **Policy** provides cover for the 'reasonable' amount of such cost, charge, expense or fee. Reasonable amount means an amount that is not excessive and where the **Insured** has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amount and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts the **Insurer** to seek the **Insurer's** consent, the **Insured** can let the **Insurer** know the steps it has taken to consider the courses of action available and discuss the circumstances with the **Insurer**. If the amounts which are to be incurred are reasonable in the circumstances, the **Insurer** will provide consent for the cost to be incurred.

## D. Policy terms

### 1. Insuring clause

The **Insurer** will indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Professional Services**.

### 2. Limit of indemnity and maximum aggregate limit of indemnity

The liability of the **Insurer** for compensation and **Claimant's Costs** in respect of any one **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** shall not exceed the **Limit of Indemnity**.

The aggregate liability of the **Insurer** under this **Policy** will not exceed the **Maximum Aggregate Limit of Indemnity** for all **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**.

### 3. Insured costs

1. If the 'Basis of Limit' in the **Schedule** is specified as 'Costs in Addition':

- (a) subject to point 1(b), the **Insurer** will, in addition to the **Limit of Indemnity**, pay reasonable **Insured Costs** incurred with the **Insurer's** prior consent in connection with a **Claim** under this **Policy**; and
- (b) if the total amount of compensation and **Claimant's Costs** required to dispose of any one **Claim** ("Total Claim Amount") exceeds the **Limit of Indemnity**, the **Insurer** shall only be liable for the percentage of reasonable **Insured Costs** that is a proportionate ratio to the Total Claim Amount that is indemnified by the **Limit of Indemnity**.

2. If the 'Basis of Limit' in the **Schedule** is specified as 'Costs within Limit':

- (a) subject to point 2(b), the **Insurer** will pay reasonable **Insured Costs** incurred with the **Insurer's** prior consent in connection with a **Claim** under this **Policy**; and
- (b) the liability of the **Insurer** for compensation, **Claimant's Costs** and reasonable **Insured Costs** in respect of any one **Claim** shall not exceed the **Limit of Indemnity** and the liability of the **Insurer** for compensation, **Claimant's Costs** and reasonable **Insured Costs** in respect of all **Claims** shall not exceed the **Maximum Aggregate Limit of Indemnity**.

### 4. Excess

If the **Excess** is specified as 'Inclusive of Insured Costs' in the **Schedule**, the **Principal Policyholder** must pay the amount of any:

1. compensation;
2. **Claimant's Costs**; and
3. **Insured Costs**,

that are collectively equal to or less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation, **Claimant's Costs** or **Insured Costs** that is equal to or less than the **Excess** for any one **Claim**.

If the **Excess** is specified as 'Exclusive of Insured Costs' in the **Schedule**, the **Excess** does not apply to **Insured Costs** but the **Principal Policyholder** must pay the amount of any:

1. compensation; and
2. **Claimant's Costs**,

that are collectively equal to or less than the **Excess** for any one **Claim**. The **Insurer** has no liability for the amount of compensation or **Claimant's Costs** that is equal to or less than the **Excess** for any one **Claim**.

The **Excess** is deducted from compensation, **Claimant's Costs** or **Insured Costs** payable before the application of the **Limit of Indemnity**.

The **Principal Policyholder** must pay the amount of reasonable costs that is equal to or less than the **Excess** for any **Privacy Breach**. The **Excess** is deducted from reasonable costs payable before the application of the sub-limit specified in extension 7.15 'Privacy breach costs'. The **Insurer** has no liability for the amount of reasonable costs that is equal to or less than the **Excess** for any **Privacy Breach**.

The **Principal Policyholder** must pay the amount of reasonable costs and expenses that is equal to or less than the **Excess** for any action taken to mitigate a loss or potential loss pursuant to extension 7.13 'Mitigation of loss'. The **Excess** is deducted from the reasonable costs and expenses payable before the application of the sub-limit specified in extension 7.13 'Mitigation of loss'. The **Insurer** has no liability for the amount of reasonable costs and expenses that is equal to or less than the **Excess** for any action taken to mitigate a loss or potential loss.

The **Principal Policyholder** must pay the amount of any reasonable **Inquiry Costs** that is equal to or less than the **Excess** for any one **Inquiry Notice**. The **Excess** is deducted from **Inquiry Costs** payable before the application of the 'Inquiry Costs Sub-limit' specified in the **Schedule**. The **Insurer** has no liability for the amount of **Inquiry Costs** that is equal to or less than the **Excess** for any one **Inquiry Notice**.

The **Principal Policyholder** must pay the amount of any reasonable **Public Relations Expenses** that is equal to or less than the **Excess** for any one **Adverse Publicity Event**. The **Excess** is deducted from the reasonable **Public Relations Expenses** payable before the application of the 'Public Relations Expenses Sub-limit' specified in the **Schedule**. The **Insurer** has no liability for the amount of any reasonable **Public Relations Expenses** that is equal to or less than the **Excess** for any one **Adverse Publicity Event**.

The **Principal Policyholder** agrees that the **Excess** must be borne by the **Principal Policyholder** and is to remain uninsured.

The method for payment of the **Excess** will depend on the particular circumstances of the **Claim**, for example:

- (a) the **Insurer** may pay the amount of compensation, **Claimant's Costs**, **Insured Costs** or **Inquiry Costs** that is equal to or less than the **Excess**, and then require repayment of this amount from the **Principal Policyholder**;
- (b) the **Insurer** may deduct the amount of the **Excess** from the amount payable by the **Insurer** to the **Insured**; or
- (c) the **Insurer** may require the **Principal Policyholder** to pay the **Excess** directly to a third party.

## 5. Aggregation of claims and notices

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one **Claim** and shall attract one **Limit of Indemnity** and one **Excess**.

For the purposes of extension 7.15 'Privacy breach costs', any **Privacy Breach** arising out of, based upon, attributable to or in respect of any one failure or series of failures consequent upon or attributable to one source or original cause shall be considered to be one **Privacy Breach** and shall attract one **Excess**.

For the purposes of extension 7.9 'Inquiry costs', all **Inquiry Notices** arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be one **Inquiry Notice** and shall attract one **Excess**.

For the purpose of extension 7.13 'Mitigation of loss', all loss or potential loss arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one loss or potential loss and shall attract one **Excess**.

## 6. Insurance clarification

For the purposes of clarifying the scope of cover under clause 1. 'Insuring Clause' of this **Policy**, civil liability includes, but is not limited to:

### 6.1 Consumer protection legislation

**Claims** for civil liability for compensation resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation, re-enactment, replacement or successor of such legislation, to the extent that such **Claims** are not otherwise excluded under this **Policy**.

### 6.2 Contractual liability

Notwithstanding exclusion 9.2.2 'Assumption of liability', contractual liability, provided that:

1. the **Insurer** will not be liable for any liability assumed by the **Insured** under a deed or agreement (for example, under any express warranty, guarantee, hold harmless agreement or indemnity clause) unless such

liability would have attached to the **Insured** in the absence of such deed or agreement; and

2. where a **Claim** is an alleged breach of contract the **Insurer** will not reduce their liability by the mere fact that contributory negligence is not available as a defence.

### 6.3 Defamation

**Claims** arising from or in respect of defamation, provided that:

1. the defamation arises from the conduct of the **Insured's Professional Services**; and
2. the defamation is not made by the **Insured** with express malice.

### 6.4 Intellectual property

Infringement of rights of intellectual property, provided that such infringement is unintentional and is committed in the conduct of the **Professional Services**.

### 6.5 Liability of the insured for acts, errors or omissions of contractors and consultants

Acts, errors or omissions of contractors and consultants, provided that the **Insurer** will only indemnify the **Insured** for its civil liability for the **Professional Services** provided by the contractor and/or consultant.

The indemnity under clause 1 'Insuring clause' will not extend to the contractor and/or consultant themselves who committed the act, error or omission, except to the extent provided for in extension 7.8 'Indemnity to contractors'.

### 6.6 Liquidated damages

Liquidated damages, provided that the **Insurer** will not be liable for any liquidated damages imposed upon the **Insured** by contract or agreement, except to the extent that the **Insured** would have been liable for that damage in the absence of any such contract or agreement.

### 6.7 Privacy and confidentiality

Unintentional breach of any duty of privacy or confidentiality at law.

## 7. Extensions

Where these 'Extensions' are noted as 'Included' in the **Schedule**, only then is the **Policy** extended to the following covers. All such 'Extensions' are subject to all the terms of the **Policy**, unless otherwise stated.

The total of all payments made under the 'Extensions' will be part of and not in addition to the **Limit of Indemnity** and the **Maximum Aggregate Limit of Indemnity**, unless otherwise stated.

### 7.1 Advancement of costs

The **Insurer** will advance reasonable **Insured Costs** and reasonable **Inquiry Costs**, incurred by the **Insurer** or the **Insured** with the **Insurer's** prior consent, as they are incurred and prior to final adjudication of a **Claim**.

If and to the extent that the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**, then the **Insurer** will cease to advance such costs and any amounts previously advanced shall be repaid to the **Insurer**.

The **Insurer** may not refuse to advance reasonable **Insured Costs** or reasonable **Inquiry Costs** by reason only that the **Insurer** considers that the conduct referred to in exclusion 9.2.4 'Dishonest, fraudulent or criminal acts' has occurred, until such conduct is established by a formal written admission by the relevant **Insured** or final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by the **Insurer**).

### 7.2 Compensation for court attendance

The **Insurer** will pay the **Policyholder** compensation if legal advisers, acting on behalf of the **Insured** with the consent of the **Insurer**, require any **Principal** or **Employee** to attend court in connection with a **Claim** under this **Policy** first made and notified to the **Insurer** during the **Policy Period**, but only in circumstances where the **Policyholder** actually pays the **Principal** or **Employee** for their time. Such compensation by the **Insurer** will be at the rate equivalent to such **Principal's** or **Employee's** daily take home salary or wage up to a maximum of \$500 per person for each day on which attendance is required subject to a maximum of \$20,000 for all persons for any one **Claim**.

If and to the extent that the **Policyholder** is not entitled to coverage under the terms and conditions of this **Policy**, then all amounts paid to the **Policyholder** under this clause shall be repaid to the **Insurer** by the **Policyholder**.

No **Excess** is applicable to this extension.

### 7.3 Continuous cover

Where the **Insured**:

1. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Policy Period**; and
2. had not notified the **Insurer** of such facts or circumstances prior to the **Policy Period**,

then exclusion 9.1.1 'Prior claims or known circumstances' will not apply to any notification during the **Policy Period** of any **Claim** resulting from such facts or circumstances, provided that:

- (a) there is an absence of fraudulent non-compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances;

- (b) the **Policyholder** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a professional indemnity policy issued by the **Insurer** and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances; and
- (c) the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Policy Period**.

#### 7.4 Dishonesty of employees

The **Insurer** will, notwithstanding exclusion 9.2.4 'Dishonest, fraudulent or criminal acts', indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from any dishonest, fraudulent, criminal or malicious act or omission by any **Employee** occurring or committed in connection with the **Professional Services**.

The **Insurer** will pay **Insured Costs** on the basis already set out in this **Policy**.

Provided that nothing in this extension shall require the **Insurer** to indemnify any **Employee** who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission or who by act or omission has condoned any such act or omission.

#### 7.5 Emergency insured costs and inquiry costs

Notwithstanding claims condition 10.4 'Claims settlement', if, due to an emergency, the **Insured** is unable to request the **Insurer's** consent prior to the incurring of **Insured Costs** or **Inquiry Costs** then the **Insured** may incur reasonable **Insured Costs** or **Inquiry Costs** without the **Insurer's** prior consent until such time as the **Insured** contacts or could reasonably have contacted the **Insurer**.

The total liability of the **Insurer** under this extension will not exceed \$100,000 in the aggregate for the **Policy Period**.

An emergency may include a circumstance where the **Insured** needs to respond to a request arising from the service of a legal document in a very short stipulated timeframe (for example, outside of business hours), where the **Insured** is not reasonably able to contact the **Insurer** in that timeframe.

In the event the **Insured** incurs reasonable **Insured Costs** or **Inquiry Costs** without the **Insurer's** prior consent after such time the **Insured** could reasonably have contacted the **Insurer** to request the **Insurer's** prior consent, the **Insurer** may reduce its liability for such **Insured Costs** or **Inquiry Costs** by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the **Insured's** failure to request the **Insurer's** prior consent.

#### 7.6 Excess reduction

Notwithstanding clause 4 'Excess', if the **Excess** is specified as 'Inclusive of Insured Costs' in the **Schedule**, and a **Claim** is settled or disposed of without incurring any **Insured Costs**, then the **Excess** for that **Claim** shall be reduced by \$10,000 with no minimum **Excess** amount.

#### 7.7 Extended reporting period

##### 7.7.1 Purchasing an extended reporting period

In the event that this **Policy** is neither renewed nor replaced at the end of the **Policy Period** with insurance that covers substantially the same risk exposure as this **Policy**, the **Principal Policyholder** will be entitled to purchase an extended reporting period as detailed in 7.7.2 below.

The **Principal Policyholder** will not be entitled to purchase an extended reporting period if the **Policyholder** is **Insolvent** during the **Policy Period**.

The entitlement to purchase the extended reporting period lapses upon expiry of the **Policy Period**.

The application to purchase the extended reporting period must be received by the **Insurer** prior to the expiry of the **Policy Period**, and payment of the additional premium must be made to the **Insurer** within thirty days of the same date.

The additional premium for the extended reporting period will be 100% of the **Full Annual Premium**.

If the extended reporting period ends because the **Policyholder** cancels the **Policy** or obtains insurance that covers substantially the same risk exposure as this **Policy** then the **Insurer** will retain a short term premium calculated at the pro rata proportion of the additional premium and the **Principal Policyholder** will receive a refund of any balance of the premium, unless there have been any notifications during the **Policy Period** or the extended reporting period, in which case no refund shall be given.

##### 7.7.2 Details of the extended reporting period

Where the **Principal Policyholder** has purchased an extended reporting period, the period begins immediately following the expiry of the **Policy Period** and ends on the earlier of 4.p.m. **L.S.T.** on the three hundred and sixty fifth day thereafter, or at the time on the effective date on which the **Policyholder** obtains insurance that covers substantially the same risk exposure as this **Policy**.

During the extended reporting period, the **Insured** may continue to notify the **Insurer** of **Claims**:

1. where the **Claim** is first made against the **Insured** during the **Policy Period** or extended reporting period; and
2. provided the **Claims** result from the conduct of the **Professional Services** prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this extended reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

### 7.8 Indemnity to contractors

Notwithstanding insurance clarification 6.5 'Liability of the insured for acts, errors or omissions of contractors and consultants', the **Insurer** will indemnify any natural person who is a past and/or present contractor of the **Policyholder** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against such contractor and notified to the **Insurer** during the **Policy Period** resulting from the conduct of the **Professional Services** for the **Policyholder**.

Provided that:

- (a) at the time of any act, error or omission by such contractor giving rise to the **Claim** such contractor:
  - (i) was performing the **Professional Services** under a contract for services entered into with the **Policyholder**; and
  - (ii) was not an **Employee** or a **Principal** of the **Policyholder**;
- (b) where:
  - (i) the **Insurer** required a declaration of the **Policyholder's** income (inclusive of gross fees paid to such contractor) for certain periods of time for the purposes of calculating the **Full Annual Premium** for this **Policy**, whether in the **Proposal** or otherwise; and
  - (ii) the gross fees paid to such contractor was not included in the declaration, the premium otherwise payable by the **Policyholder** will be adjusted accordingly by the **Insurer** at the time of the **Claim** in relation to the contractor; and
- (c) all third party beneficiaries must comply with the terms and conditions of the **Policy**, including without limitation, the claims conditions.

The **Insurer** will pay **Insured Costs** on the basis already set out in this **Policy**.

### 7.9 Inquiry costs

The **Insurer** will indemnify the **Insured** for reasonable **Inquiry Costs** incurred with the **Insurer's** prior consent.

Provided that:

- (a) the **Inquiry Notice** is first received by the **Insured** and notified to the **Insurer** during the **Policy Period**;
- (b) such **Inquiry Notice** arises directly from conduct allegedly committed by the **Insured** in conducting the **Professional Services**; and
- (c) regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity.

The total liability of the **Insurer** for all reasonable **Inquiry Costs** under this extension will not exceed in the aggregate, during the **Policy Period**, the 'Inquiry Costs Sub-limit' specified in the **Schedule**.

### 7.10 Joint venture liability

The **Insurer** will indemnify the **Insured** against civil liability for compensation and **Claimant's Costs** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** resulting from the **Policyholder's** participation in any joint venture in connection with the **Professional Services** provided that:

- (a) the indemnity given shall only relate to the **Policyholder's** proportion of any liability incurred by such joint venture; and
- (b) where:
  - (i) the **Insurer** required a declaration of the **Policyholder's** income derived from participation in such joint venture for the purpose of calculating the **Full Annual Premium** for this **Policy**, whether in the **Proposal** or otherwise; and
  - (ii) the income derived from participation in such joint venture was not included in the declaration, the premium otherwise payable by the **Policyholder** will be adjusted accordingly by the **Insurer** at the time of the **Claim** in relation to the **Insured**.

The **Insurer** will pay **Insured Costs** on the basis already set out in this **Policy**.

### 7.11 Legal consultation

The **Policyholder** is entitled to up to two hours legal advice from the 'Legal Adviser' specified in the **Schedule** (or their delegate) on any matter related to the risks insured under this **Policy**, except in relation to the scope of cover provided under this **Policy**, or claims, disputes or complaints against the **Insurer**, provided that:

- (a) the legal advice is sought during the **Policy Period**; and
- (b) the **Policyholder** must provide the legal adviser with the policy number, **Policy Period** and name of the **Policyholder**.

There will be no cost payable by the **Policyholder** for the legal advice.

## 7.12 Lost documents

The **Insurer** will, in the event of loss of or damage to **Documents** occurring in connection with the **Professional Services**, indemnify the **Insured** against:

1. civil liability and **Claimant's Costs** in respect of any **Claim** resulting from such loss or damage; and
2. reasonable costs and expenses incurred by the **Policyholder** in replacing such **Documents**,

provided that:

(a) such loss or damage is sustained during the **Policy Period** while the **Documents** are in transit or in the custody of, either:

- (i) the **Policyholder**; or
- (ii) any third party to whom a reasonable person in the **Policyholder's** professional position would entrust the **Documents** with the expectation that the **Documents** would be protected from loss or damage;

(b) where the **Documents** are in electronic format, the **Policyholder** has:

(i) ensured the following information technology ("IT") security measures are in place or has undertaken reasonable enquiries to verify whether a third party that the **Policyholder** has entrusted the **Documents** with, has the following IT security measures in place:

1. procedures in place to back up such **Documents** at least once a week;
2. active and up-to-date IT security that, at a minimum, has the ability to:

i. identify and remove software viruses and other types of harmful and malicious software ("Viruses");

ii. automatically scan files, documents, emails, email attachments, folders and other means of storing, transmitting and using digital information, for Viruses;

iii. provide firewall protection; and

iv. automatically receive updates from the relevant provider of such Virus and firewall protection; and

(ii) done everything that a reasonable person in the **Policyholder's** position would do to ensure that the abilities listed in (b)(i)(1) and (2) above are enabled and fully utilised on an ongoing basis by either the **Policyholder** or the third party;

(c) the amount of any claim for such costs and expenses shall be supported by proof of loss or damage to **Documents** (for example bills and accounts) which shall be subject to approval by an appropriately qualified and experienced professional or advisor to be nominated by the **Insurer** with the consent of the **Policyholder** or if such consent is withheld, by the President of the Law Society of the State or Territory where the **Policy** was issued;

(d) the **Insurer** will not be liable in respect of loss or damage caused by riot or civil commotion; and

(e) the **Insurer** will not be liable in respect of loss or damage caused by:

(i) mould;

(ii) vermin or pest infestation; or

(iii) fading, wear, tear or any other gradually operating cause.

The total liability of the **Insurer** for all costs and expenses under paragraph 2 of this extension will not exceed in the aggregate, during the **Policy Period**, the 'Lost Documents Sub-limit' specified in the **Schedule**.

## 7.13 Mitigation of loss

The **Insurer** will indemnify the **Insured** for the reasonable costs and expenses incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a **Claim** under the **Policy** provided that:

(a) the **Insured** first discovers the relevant act, error or omission which would give rise to the loss during the **Policy Period** and notifies the **Insurer** during the **Policy Period**; and

(b) the **Insured** obtains consent from the **Insurer** prior to incurring such costs.

The total liability of the **Insurer** for all costs and expenses incurred under this extension will not exceed \$100,000 in the aggregate during the **Policy Period**.

The **Excess** is applicable to this extension.

## 7.14 Newly acquired subsidiary

If the **Policyholder** acquires a **New Subsidiary**:

(a) that has total annual revenue (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) no greater than 25% of the total annual revenue of the **Policyholder** as disclosed in the **Proposal**, the definition of **Insured** will be extended to include such **New Subsidiary** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the period beginning on the date of acquisition resulting from the conduct of the **Professional Services** by such **New Subsidiary**, but not in

respect of any such **Claim** resulting from any act, error or omission occurring or committed prior to the date the **New Subsidiary** was acquired; or

- (b) that has total annual revenue (by reference to the **New Subsidiary's** most recent financial statements as at the time of acquisition) of greater than 25% of the total annual revenue of the **Policyholder** as disclosed in the **Proposal**, the definition of **Insured** will also include such **New Subsidiary** in respect of any **Claim** first made against the **Insured** and notified to the **Insurer** during the period beginning on the date of acquisition and ending sixty (60) days thereafter or at the expiry of the **Policy Period**, whichever is the lesser period ("Subsidiary Cover Period"), resulting from the conduct of the **Professional Services** by such **New Subsidiary**, but not in respect of any such **Claim** resulting from any act, error or omission occurring or committed prior to the date the **New Subsidiary** was acquired.

In relation to (b) above, where the **Policyholder** wishes to have cover for the **New Subsidiary** beyond the Subsidiary Cover Period, it must contact the **Insurer** to discuss and the **Insurer** will confirm whether it is willing to offer cover, on what terms and for what additional premium.

When the **Policyholder** contacts the **Insurer**, the **Insurer** must provide its response as soon as possible but no later than the end of the Subsidiary Cover Period, or, where the **Policyholder** contacts the **Insurer** less than five business days before the end of the Subsidiary Cover Period, the **Insurer** must provide its response within five business days.

Any offer by the **Insurer** to provide ongoing cover for such **New Subsidiary** is not effective until the **Insurer** receives the **Policyholder's** written acceptance of the **Insurer's** offer.

This extension does not extend cover:

- (i) to any **New Subsidiary** that is domiciled or incorporated in the United States of America or its territories or protectorates; and
- (ii) for the conduct, prior to the acquisition of such **New Subsidiary**, of services that are not the same as those conducted by the **Policyholder** and covered under this **Policy**.

#### 7.15 Privacy breach costs

The **Insurer** will indemnify the **Insured** for the reasonable costs of notifying individuals or corporations of a **Privacy Breach**, resulting from the conduct of the **Professional Services**.

Provided that:

- (a) the **Insured** first discovers the **Privacy Breach** during the **Policy Period** and notifies the **Insurer** during the **Policy Period**; and
- (b) the **Insured** obtains consent from the **Insurer** prior to incurring such costs.

The total liability of the **Insurer** for all costs incurred under this extension will not exceed \$50,000 in the aggregate during the **Policy Period**.

The **Excess** is applicable to this extension.

For the purposes of this extension, exclusion 9.1.2 'Retroactive date' is amended to read 'any costs resulting from any incident occurring prior to the **Retroactive Date**'.

#### 7.16 Public relations expenses

The **Insurer** will indemnify the **Policyholder** for reasonable **Public Relations Expenses** incurred by the **Policyholder** in respect of an **Adverse Publicity Event** that first occurs and is notified to the **Insurer** during the **Policy Period**.

Provided that:

- (a) the **Insurer** will only indemnify the **Policyholder** for the reasonable **Public Relations Expenses** that are incurred during the first thirty days immediately following the **Adverse Publicity Event**; and
- (b) the reasonable **Public Relations Expenses** are incurred with the **Insurer's** prior consent.

The total liability of the **Insurer** under this extension will not exceed in the aggregate the 'Public Relations Expenses Sub-limit' specified in the **Schedule** during the **Policy Period**.

#### 7.17 Run off cover

If, during the **Policy Period**, any of the following events occur:

- (a) a **Merger or Acquisition** of the **Policyholder**; or
- (b) the appointment of a receiver, controller, administrator or liquidator to the **Policyholder** or the commencement of a scheme of arrangement or compromise or a winding up process in respect of the **Policyholder**,

then this **Policy** will remain in force until the expiry of the **Policy Period**, but only in respect of a **Claim** resulting from any act, error or omission occurring or committed prior to the event described in parts (a) or (b) of this extension.

#### 7.18 Spousal liability

If a **Claim** against an **Insured** includes a claim against such **Insured's Spouse** solely by reason of:

- (a) such **Spouse's** legal status as a **Spouse** of such **Insured**; or
- (b) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured**,

then the **Spouse's** legal liability for compensation resulting from such **Claim** will be treated for the purposes of this **Policy** as the liability of the **Insured**.

This extension does not apply to the extent the **Claim** alleges any act, error or omission by such **Insured's Spouse**.

#### 7.19 Thirty day reporting period

The **Insured** may continue to notify the **Insurer** of **Claims** up to thirty days after the expiry of the **Policy Period**, but only **Claims** first made against the **Insured** during the **Policy Period** and based on any act, error or omission committed or alleged to have been committed prior to expiry of the **Policy Period**.

Any notification to the **Insurer** during this thirty day reporting period will be deemed to have been first notified to the **Insurer** during the **Policy Period**.

For a late notification after this period of time (unless otherwise provided for under this **Policy**), the **Insurer** may be able to refuse to pay a claim or reduce its liability by an amount that fairly represents the extent to which the **Insurer** has been prejudiced by the **Insured's** delay to notify the **Insurer** of a **Claim**.

### 8. Optional extension

#### 8.1 Principal's previous business

If the 'Principal's Previous Business' extension is noted as 'Included' in the **Schedule** then the **Policy** is extended to cover **Claims** made against any past and/or present **Principal** of the **Policyholder** and notified to the **Insurer** during the **Policy Period** resulting from the conduct of professional services that are the same as the **Professional Services** whilst such **Principal** was a sole practitioner, a partner of a firm or a director of a company other than the **Policyholder** prior to becoming a **Principal** of the **Policyholder**.

### 9. Exclusions

#### 9.1 Section 1

The **Insurer** shall not be liable in respect of:

##### 9.1.1 Prior claims or known circumstances

- (a) any **Claim** first made against the **Insured** prior to the inception of the **Policy Period** or disclosed in the **Proposal**; or
- (b) any **Claim**, liability, compensation, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** directly or indirectly arising from or in respect of any facts, events or circumstances:
  - (i) which the **Insured** knew, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** which might be covered under this **Policy**;
  - (ii) which a reasonable person in the **Insured's** position would have thought, prior to the inception of the **Policy Period**, might give rise to a **Claim**, liability, compensation, **Inquiry Costs**, **Claimant's Costs** or **Insured Costs** which might be covered under this **Policy**;
  - (iii) which were disclosed in the **Proposal** or were or could be notified under any insurance that was in force prior to the inception of the **Policy Period**;
  - (iv) which were alleged in or discovered in any **Claim** made against the **Insured** prior to the inception of the **Policy Period**; or
  - (v) relating to or underlying any **Claim** made against the **Insured** prior to the inception of the **Policy Period**.

##### 9.1.2 Retroactive date

any **Claim** resulting from any act, error or omission occurring or committed prior to the **Retroactive Date**.

##### 9.1.3 Professional fees

- (a) any **Claim** for indemnity by the **Insured** for;
- (b) any **Claim** solely for; or
- (c) that part of any **Claim** that is in respect of, professional fees or charges or the refund of professional fees or charges (by way of damages or otherwise).

#### 9.2 Section 2

The **Insurer** shall not be liable in respect of any **Professional Services**, **Claim**, liability, compensation, **Inquiry Costs**, **Claimant's Costs**, **Insured Costs**, compensation for court attendance, loss of or damage to **Documents**, costs and expenses incurred in respect of any action taken to mitigate a loss or potential loss, costs of notifying individuals or corporations of a **Privacy Breach** or **Public Relations Expenses**:

### 9.2.1 Asbestos

arising directly or indirectly from or in respect of asbestos, asbestos fibres or derivatives of asbestos.

### 9.2.2 Assumption of liability

arising directly or indirectly from or in respect of liability that would not be assumed in the ordinary course of, and as a necessary part of the **Professional Services**, as would be customary for a prudent operator carrying on business of the same nature as the **Insured**.

In the event of any conflict between this exclusion and insurance clarification 6.2 'Contractual liability', insurance clarification 6.2 shall prevail.

### 9.2.3 Directors and officers liability

arising directly or indirectly from or in respect of the **Insured's** functions and duties as a director and/or officer of the **Insured** or any legal entity, corporation or other incorporated body.

### 9.2.4 Dishonest, fraudulent or criminal acts

arising directly or indirectly from or in respect of any:

- (a) dishonest, fraudulent or malicious act or omission by the **Insured**; or
- (b) criminal act or omission or breach of any statute committed by the **Insured** with reckless or wilful intent, other than provided for in extension 7.4 'Dishonesty of employees'.

### 9.2.5 Employer's liability

arising directly or indirectly from or in respect of:

- (a) the death, bodily injury, disease or illness of any **Insured** arising out of or in the course of or in respect of their employment; or
- (b) a breach of any obligation owed by an **Insured** as an employer, to an **Employee**.

### 9.2.6 Fines, penalties, punitive or aggravated damages

arising directly or indirectly from or in respect of fines or penalties including civil penalties, punitive or aggravated damages.

### 9.2.7 Radioactivity

arising directly or indirectly from or in respect of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear device or assembly, or a nuclear component thereof.

### 9.2.8 Related parties

arising directly or indirectly from or in respect of any **Claim** brought by:

- (a) any **Insured**;
- (b) any **Subsidiary**;
- (c) any company or trust which is operated or controlled by the **Insured** or its nominees or trustees and in which an **Insured** has a direct or indirect financial interest;
- (d) any trustee of a trust of which an **Insured** or a **Relative** of an **Insured** is a beneficiary;
- (e) any company in which an **Insured** has or has held at least a 20% financial interest and has had or has board representation on that company;
- (f) any **Relative** or any company owned or controlled by a **Relative**, unless the **Professional Services** that gave rise to the **Claim** were signed off by a **Principal** of the **Policyholder** who is a person not related to the **Relative**; or
- (g) any company, trust or person having a direct or indirect financial, executive or controlling interest in the **Insured**, unless such interest is less than 20%.

This exclusion shall not apply to:

- (i) a cross-claim or **Claim** brought by an **Insured** against another **Insured** for the purposes of contribution or indemnity where a claim is brought by a third party; or
- (ii) a **Claim** brought by or on behalf of an **Employee** directly in relation to **Professional Services** provided by an **Insured** to that **Employee**.

### 9.2.9 Sanctions

that would be in contravention of any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

### 9.2.10 Subrogation waiver

arising directly or indirectly from or in respect of any liability which is incurred or affected by reason of the **Insured** at any time entering into a deed or agreement excluding, limiting or delaying the **Insured's** legal rights of recovery against another, other than a deed or agreement the **Insured** has entered into at the direction of or with the prior consent of the **Insurer**.

### 9.2.11 Terrorism

arising directly or indirectly from or in respect of:

- (a) any **Act of Terrorism**; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

### 9.2.12 Trade debt

arising directly or indirectly from or in respect of any trade debt incurred, or any guarantee in respect of such debt given, by the **Insured**.

## 10. Claims conditions

In the event of a failure by the **Insured** to comply with a provision requiring the **Insured's** compliance under this section, the **Insurer** may be able to:

- (a) refuse a **Claim**;
- (b) reduce its liability to pay a **Claim** by an amount that fairly represents the extent to which the **Insurer's** interests are prejudiced by the failure to comply; or
- (c) cancel the **Policy**.

### 10.1 Claims notifications

The **Insured** must give the **Insurer** a notification of any **Claim** made against the **Insured** and any **Inquiry Notice** received by the **Insured**, as soon as reasonably possible within the **Policy Period** (or any additional or extended reporting period applicable under the **Policy**).

Every legal document or other communication the **Insured** receives (including letters, demands, writs, summons and legal processes) relating to such **Claim** or **Inquiry Notice** shall be forwarded to the **Insurer** as soon as possible after receipt.

All notifications to the **Insurer**, including but not limited to **Claims** and any legal documents and other communications specified above, must be sent to the Claims Notification address specified in the **Schedule**.

### 10.2 Claims co-operation

The **Insurer** may make any investigation as is reasonably required in relation to the **Claim** or **Inquiry Notice**.

The **Insured** must:

- (a) cooperate and provide the **Insurer** with reasonable assistance in connection with any investigation, negotiation, recovery, defence and legal proceeding or settlement of a **Claim** or **Inquiry Notice**. This assistance may include:
  - (i) lodging a police report;
  - (ii) providing a more detailed version of facts, including signing statements and affidavits;
  - (iii) providing further information, evidence and documentation;
  - (iv) attending court or meetings with appointed legal experts;
  - (v) making available **Employees** and **Principals** for interviews, meetings and court attendance;
  - (vi) providing contact details of individuals (if available) who may have information that is relevant to the **Claim** (to the extent that the provision of such details would not breach any legally enforceable privacy or confidentiality requirement); or
  - (vii) providing access to systems and records (to the extent that doing so would not breach any legally enforceable privacy or confidentiality requirement); and
- (b) where reasonably possible, take steps to avoid or diminish further loss, for example:
  - (i) stopping use of processes or documentation which the **Insured** suspects may have contributed to the loss claimed by the third party;
  - (ii) where applicable to the **Insured's Professional Services**, checking the functionality of any standard measures, processes or procedures (for example, risk control processes) in place to prevent loss;
  - (iii) avoiding confrontational engagement with an aggravated claimant;
  - (iv) maintaining a detailed record of all communications with any party about the loss; or
  - (v) where the **Insured** is the **Policyholder**, taking steps which a reasonable person in the **Insured's** professional position would take (for example, suspending an employee) where the **Insured** has confirmed or suspects dishonesty or a fraudulent or malicious act or omission has contributed to the loss claimed by the third party.

Any costs of the **Insured** to comply with the above requirements shall be borne by the **Insured**, unless otherwise covered under the **Policy**.

### 10.3 Claims conduct

#### 10.3.1 Conducting defence and settlement of the claim

The **Insurer** has the right and full discretion, but is not obligated to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** or investigation relating to an **Inquiry Notice** (including in relation to insured, underinsured and uninsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of the **Claim** or **Inquiry Notice**.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or **Inquiry Notice** or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

#### 10.3.2 Where the insured disputes the approach to defending the claim

If the **Insured** disputes the **Insurer's** approach to defending the **Claim** or **Inquiry Notice**, the **Insured** and **Insurer** shall endeavour to settle this dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.

The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC (the Guidelines).

The terms of the Guidelines are hereby deemed incorporated into this **Policy**.

### 10.4 Claims settlement

The **Insured** must not settle or offer to settle any **Claim**, incur any **Insured Costs**, incur any **Inquiry Costs** or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** or **Inquiry Notice** without the **Insurer's** prior consent.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any **Claim** payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such **Claim** so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the **Insurer**, together with **Insured Costs** payable in accordance with the terms of this **Policy** and incurred up to the time of such election, subject to the **Excess** and to the **Limit of Indemnity**.

If the **Insured** objects to a proposal by the **Insurer** to resolve any **Inquiry Notice** covered under this **Policy** and wishes to contest the matter, then the **Insured** may so elect, but the **Insurer's** liability for **Inquiry Costs** in respect of any such **Inquiry Notice** so contested will not exceed the amount which, but for such election, would have been incurred by the **Insurer** to resolve the matter, subject to the 'Inquiry Costs Excess' and the 'Inquiry Cost Sub-limit' specified in the **Schedule**.

### 10.5 Allocation of loss

#### 10.5.1 When this clause applies

This clause applies to any civil liability for compensation and **Claimant's Costs**, **Insured Costs** and compensation for court attendance in respect of any **Claim**, and **Inquiry Costs** (referred to collectively as "Loss" under this clause), which is either or both:

- (a) in respect of more than one person or entity (at least one of whom is an **Insured**), whether jointly or severally; or
- (b) partly covered and partly not covered under this **Policy**,  
(together 'Loss to be Allocated').

The **Insurer** must decide a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant **Insureds** and the **Insurer** having regard to the extent of each **Insured's** comparative responsibility for the Loss to be Allocated.

#### 10.5.2 What the insurer must take into account when deciding loss to be allocated

The **Insurer's** consideration of what is fair and reasonable shall include without limitation, the following factors:

- (a) the nature of the **Claim** or **Inquiry Notice** against each **Insured**;
- (b) the issues of fact and law in relation to each **Insured**;
- (c) the content and the manner of the conduct of any defence of the **Claim** or **Inquiry Notice**;
- (d) the relative degree of personal responsibility for the Loss;
- (e) the extent to which the **Insured's** responsibility for the Loss is joint, several or shared;
- (f) the extent to which any person or entity, other than that **Insured**, would obtain a benefit from the payment by the **Insurer**;
- (g) the extent to which the Loss is solely of that **Insured**;
- (h) the extent to which the issues in the **Claim** or **Inquiry Notice** against that **Insured** are in common with the issues in the **Claim** or **Inquiry Notice** against any other person or entity;

- (i) the extent to which the Loss is partly covered and partly not covered under this **Policy**; and
- (j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

### 10.5.3 If the insured does not agree with the insurer's decision relating to the allocation of loss

If the **Insured** wishes to dispute the **Insurer's** decision in respect of allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Disputes Centre's ("ADC") Rules for Expert Determination ("Rules") available on the ADC's website, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert appointed by the ADC in accordance with the Rules.

Each party agrees to sign an agreement with the expert that confirms the following matters, unless contrary to the Rules or the requirements of the ADC:

- (a) the payment of fees for the appointed expert (Note: refer to 'Cost of the expert determination' below for more information);
- (b) the expert may:
  - (i) consider relevant industry practice;
  - (ii) consider all information presented to the expert by either party;
  - (iii) request more information from either party; or
  - (iv) request a meeting with the parties (to which they may bring their legal representatives or other persons with information or knowledge relevant to the determination) (Note: in accordance with the Rules, the meeting is not a hearing);
- (c) the expert must provide a determination, subject to receiving all information required, within thirty days after the agreement is signed, unless:
  - (i) another time is agreed between the parties, in which case the agreement will provide for this timeframe; or
  - (ii) the expert must comply with a timeframe as set by the ADC, in which case the agreement will provide for this timeframe;
- (d) the expert must provide written reasons for the determination;
- (e) the expert's decision will be binding on the parties and final; and
- (f) the liability of the expert to either party (including liability for negligence) will be excluded to the full extent permitted by law.

This allocation applies for all purposes under this **Policy** including extension 7.1 'Advancement of costs'.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of other Loss on account of such **Claim**.

### 10.5.4 Cost of the expert determination

The **Insurer** will pay for the cost of the expert determination above, including the **Insured's** share of the costs.

The ADC may require each party to bear the cost of the expert determination in equal proportions and require each party to individually pay their share of any cost required directly (including any fee, deposit or other amount charged). Where this is required, the **Insured** must pay the costs accordingly and the **Insurer** will separately reimburse the **Insured** for the cost of the expert determination.

## 10.6 Recovery rights

### 10.6.1 Preservation of rights of recovery

The **Insured** must not, without the **Insurer's** prior consent, enter into:

- (a) any agreement whereby the **Insured** releases, agrees not to sue on, waives or prejudices, any rights to recover from a person or organisation who is or could have been liable to compensate the **Insured** for any loss, damage or legal liability;
- (b) any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- (c) any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated in respect to such loss, damage or legal liability are or may be prejudiced.

Where the **Insured** does not comply with the above, the **Insurer** may not cover the **Insured** under this **Policy** for any such loss, damage or legal liability.

### 10.6.2 Rights of recovery

In the event of any payment under this **Policy**, the **Insurer** will be subrogated to all the **Insured's** rights of recovery against any person or organisation.

The **Insurer** has the right and full discretion but is not obligated to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, uninsured and underinsured losses). The **Insurer** may engage legal or other representatives to assist in the conduct of any recovery action.

The **Insurer** shall not exercise its rights of subrogation against an **Insured** in connection with a **Claim**, unless it can establish that exclusion 9.2.4 'Dishonest, fraudulent or criminal acts' applies to that **Claim** and to that **Insured**.

## 10.7 Application of recoveries

All recoveries obtained from other parties will be allocated, after the settlement of any **Claim** under this **Policy**, as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of compensation, **Claimant's Costs** or **Insured Costs** to the extent that such amounts would have been paid under this **Policy** but for the fact that such amounts exceed the sum of:
  - (i) the **Limit of Indemnity**, or the amount of any specified limit applicable to a specific clause where applicable;
  - (ii) if the 'Basis of Limit' is specified as 'Costs in Addition', **Insured Costs** payable in addition to the **Limit of Indemnity**; and
  - (iii) the **Excess** where applicable;
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement, defence or investigation of any **Claim** under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Excess** under this **Policy**.

All recoveries will be applied as above only after deduction of the reasonable cost of obtaining such recovery.

All recoveries made prior to settlement of any **Claim** under this **Policy** will be held for the benefit of the **Insurer** and applied as stated above after settlement if any is made.

Recoveries do not include any amount recovered from insurance, surety, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

## 11. General conditions

### 11.1 Assignment

This **Policy** cannot be assigned by the **Policyholder**.

### 11.2 Authorisation

The **Principal Policyholder** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Principal Policyholder** for all purposes under this **Policy**, subject to claims condition 10.3 'Claims conduct' and general condition 11.11 'Severability and non-imputation'.

### 11.3 Cancellation

The **Principal Policyholder** may cancel this **Policy** at any time in writing to the **Insurer** and specify the date from which it would like to cancel the **Policy**. The date cannot be earlier than the date the **Insurer** receives the request.

The **Insurer** may cancel this **Policy** where the law allows the **Insurer** to do so, including where:

- (a) an **Insured** has failed to comply with a provision of the **Policy**; or
- (b) the **Policyholder** has failed to comply with a provision of the **Policy** including with respect to payment of premium.

Upon cancellation, the **Insurer** will retain a short period premium calculated at the pro rata proportion of the **Full Annual Premium** for the time it has been on risk. The **Insurer** will refund to the **Principal Policyholder** the balance of the premium actually paid (including GST if applicable) less any non-refundable government charges, unless there have been any notifications during the **Policy Period** or the **Policy** is cancelled due to fraud, in which case no refund shall be given.

### 11.4 Endorsements

An **Endorsement** does not affect or increase the **Limit of Indemnity**, the **Maximum Limit of Indemnity** or any other term, except to the extent specifically provided in the **Endorsement**. Each **Endorsement** is otherwise subject to all the terms of this **Policy**.

### 11.5 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Policyholder** an amount on account of GST, stamp duty and any other government charges and levies that apply. The premium also includes any discounts the **Insurer** has given the **Policyholder**, and these discounts are applied before the addition of any applicable government taxes and charges.

The **Insured** must tell the **Insurer** about the input tax credit (ITC) the **Insured** is entitled to for their premium and the **Insured's** claim, each time the **Insured** makes a claim. If the **Insured** does not give the **Insurer** this information or if the **Insured** tells the **Insurer** an incorrect ITC, the **Insurer** will not pay any GST liability the **Insured** incurs.

The **Insurer's** liability to the **Insured** will be calculated taking into account any ITC to which the **Insured** is entitled for any acquisition which is relevant to the claim, or to which the **Insured** would have been entitled had the **Insured** made a relevant acquisition.

In respect of the **Insured's Policy**, where the **Insured** is registered for GST purposes the **Insured** should calculate the insured amount having regard to the **Insured's** entitlement to input tax credits. The **Insured** should, therefore, consider the net amount (after all input tax credits) which is to be insured and determine an insured amount on a GST exclusive basis.

This outline of the effect of the GST on the **Insured's Policy** is for general information only. The **Insured** should not rely on this information without first seeking expert advice on the application of the GST to the **Insured's** circumstances.

'GST', 'input tax credit' and 'acquisition' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

## 11.6 Governing law

The **Policy** will be governed in accordance with law of the State or Territory of Australia in which the **Policy** was issued. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

## 11.7 Interpretation

In this **Policy** the singular includes the plural and vice versa. The neutral gender includes the female and male genders.

A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

## 11.8 Material change

### 11.8.1 The policyholder's obligation to notify the insurer of certain matters

The **Policyholder** must notify the **Insurer** during the **Policy Period** as soon as reasonably possible of the following matters:

- (a) if the **Insured** starts (or intends to start) conducting services that differ from the **Professional Services**;
- (b) if the **Insured** starts (or intends to start) conducting specific activities (being activities specifically asked about on the **Proposal** or by the **Insurer**), where at the time of commencing or renewing the **Policy**, the **Insured** had advised the **Insurer** that it did not conduct those specific activities, including any express or passive confirmation of such at the time of renewing the **Policy**;
- (c) if there has been a loss of or condition imposed upon any licence or authority required by the **Insured** to conduct the **Professional Services**;
- (d) if there has been a loss of or condition imposed upon any professional membership held by the **Insured** in connection with the **Professional Services**; or
- (e) the **Policyholder** becomes **Insolvent**.

If the **Policyholder** has not told the **Insurer** about any of the above matters having occurred during any other period of insurance the **Policyholder** held this policy with the **Insurer**, the **Policyholder** must notify the **Insurer** as soon as possible.

### 11.8.2 What will happen once the policyholder contacts the insurer

Following notification of the matters above, the **Insurer** will advise the **Policyholder** as to whether it is willing to provide additional cover or continue offering cover, and if so, on what terms (for example, any endorsements, additional excess or special condition that may need to be applied) and for what additional premium (if any). This will be based on the **Insurer's** risk appetite and underwriting guidelines.

If the change in risk means that the risk is no longer acceptable under the **Insurer's** risk appetite or underwriting guidelines, the **Insurer** may cancel the **Policy**.

Any offer by the **Insurer** to cover the changes in risk notified to the **Insurer** is not effective until the **Insurer** receives the **Policyholder's** written acceptance of the **Insurer's** offer. Until that time the changes notified are not covered.

The **Policyholder** is entitled to cancel the **Policy** at any time, including where the **Insurer** does not offer to cover the changes notified or the **Policyholder** does not accept the **Insurer's** offer to cover the changes.

If a **Claim** arises from the changes in risk which are not yet covered or the **Insurer** does not agree to provide cover, the **Insurer** may reduce or refuse to pay such **Claim** to the extent it arises from the change in risk.

If the **Policyholder** does not contact the **Insurer** as required, it may lead to the **Insurer** reducing or refusing a claim and/or canceling this **Policy**.

## 11.9 Other insurance

If at the time any **Claim** arises under this **Policy** there is any other insurance in force covering the same liability the **Policyholder** shall as soon as possible give to the **Insurer** full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the **Insurer** may reasonably require. This is to enable the **Insurer** to exercise its right to seek contribution from the insurer of that other insurance.

### 11.10 Payment of premium

The **Policyholder** must pay the 'Premium' specified in the **Schedule** for the **Policy Period** to the **Insurer** by the due date. The due date is on or before ninety days after the inception date of the **Policy Period** or such other time that the **Insurer** agrees in writing. If the **Policyholder** fails to pay the 'Premium' by the due date, the **Insurer** is entitled to cancel this **Policy** where the law allows it to do so.

### 11.11 Severability and non-imputation

Where this **Policy** insures more than one party, any failure on the part of any of the parties to:

- (a) comply with the duty of disclosure under the Insurance Contracts Act 1984;
- (b) comply with any obligation under this **Policy** (other than the obligation to pay premium); or
- (c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this **Policy**, provided that such remaining party or parties shall:

- (i) be entirely innocent of and have had no prior knowledge of any such failure; and
- (ii) as soon as possible after becoming aware of any such failure, advise the **Insurer** in writing of all its relevant circumstances.

### 11.12 Territorial and jurisdictional limits of cover

This **Policy** provides cover for:

- (a) any civil liability resulting from the conduct of the **Professional Services** anywhere in the world; and
- (b) **Claims** made anywhere in the world, except for those **Claims**:
  - (i) brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the **Insured** in the United States of America; or
  - (ii) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law, arbitration, tribunal or other judicial body in the United States of America.

For the purpose of this general condition the United States of America includes its territories and protectorates.

### 11.13 Variation of the policy

No variation of this **Policy** will be effective, unless made by **Endorsement**.

## 12. Definitions

For the purpose of this **Policy**:

**Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting 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, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

**Adverse Publicity Event** means an event which, in the reasonable opinion of a **Principal** of the **Policyholder**, might cause the reputation of the **Insured** to be seriously affected by adverse or negative publicity.

**Claimant's Costs** means legal costs and expenses the **Insured** is liable to pay to the person making a **Claim** against the **Insured**.

**Claim** means any demand made by a third party upon the **Insured** for compensation, however conveyed, including a writ, statement of claim, application or other legal or arbitral process.

**Control** has the meaning given by section 50AA of the Corporations Act 2001.

**Documents** means deeds, wills, agreements, maps, plans, records, computer records, electronic data, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) which is the property of the **Policyholder** or for which the **Policyholder** is responsible.

**Employee** means a natural person (other than a **Principal**) employed under a contract of service or apprenticeship by the **Policyholder** and includes any trainee, volunteer and casual, part-time, seasonal, temporary and work experience personnel.

**Endorsement** means any document which is described as an endorsement to this **Policy** and intends to vary it.

**Excess** means the amount shown in the **Schedule** except in respect of:

- (a) **Inquiry Costs** in which case it means the amount shown in the **Schedule** as the 'Inquiry Costs Excess'; or
- (b) **Public Relations Expenses** in which case it means \$1,000.

**Full Annual Premium** means the annual premium payable by the **Principal Policyholder**, including any additional premium which becomes payable in respect of the **Policy Period**.

**Inquiring Body** means any official body or institution empowered by law to investigate the professional conduct of the **Insured** including but not limited to a coroner's court, statutory regulatory body, tribunal or legally

constituted industry or professional board but excluding any Royal Commission, any parliament or any committee of a parliament.

**Inquiry Costs** means the legal costs and expenses (not being **Insured Costs**) incurred by the **Insurer**, or by the **Insured**:

- (a) arising out of any notice from an **Inquiring Body** requiring a response from the **Insured** or requiring the **Insured's** attendance at an investigation, inquiry or hearing held before the **Inquiring Body**;
- (b) in responding to any notice from a Royal Commission; or
- (c) arising out of any notice from a Royal Commission requiring the **Insured's** attendance at an investigation, inquiry or hearing held before that Royal Commission.

**Inquiry Notice** means any notice that may result in the **Insured** incurring **Inquiry Costs**.

**Insolvency or Insolvent** means:

- (a) the **Policyholder** is an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));
- (b) the **Policyholder** has had a controller appointed or is in liquidation, in provisional liquidation, under administration, has been wound up or has had a receiver appointed to any part of its property;
- (c) the **Policyholder** is subject to any arrangement, assignment, moratorium, compromise or composition, it is protected from creditors under any statute or it is dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made, resolution passed, proposal put forward or any other action taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) the **Policyholder** is taken (under Section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) the **Policyholder** is otherwise unable to pay its debts when they fall due; or
- (g) in respect to the **Policyholder**, an event having the same or similar effect to (a) to (e) above, occurring under the law of any jurisdiction outside of the Commonwealth of Australia.

**Insured** means:

- (a) the **Policyholder**;
- (b) any **Subsidiary**;
- (c) any past and/or present **Employee** of the **Policyholder** or **Subsidiary**, but only in his or her capacity as such;
- (d) any past and/or present **Principal** of the **Policyholder** or **Subsidiary**, but only in his or her capacity as such; and/or
- (e) the estate, heirs, legal representatives or legal assigns of any natural person insured under this **Policy** in the event of the death or legal incapacity of such person.

**Insured Costs** means the costs and expenses incurred by the **Insurer**, or by the **Insured**, in defending, investigating or settling any **Claim** (not being **Claimant's Costs**).

**Insurer** means AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

**Limit of Indemnity** means the amount specified beside 'Limit of Indemnity' as shown in the **Schedule**.

**L.S.T. or Local Standard Time** means the time in the State or Territory of Australia in which the **Policy** was issued.

**Maximum Aggregate Limit of Indemnity** means the amount specified beside 'Maximum Aggregate Limit of Indemnity' as shown in the **Schedule**.

**Merger or Acquisition** means:

- (a) the **Policyholder** consolidating with, merging into or selling all or substantially all of its assets such that the **Policyholder** is not the surviving entity; or
- (b) any entity obtaining **Control** of the **Policyholder**.

**New Subsidiary** means a subsidiary, as defined in the Corporations Act 2001, of the **Policyholder** which is acquired by the **Policyholder** during the **Policy Period**.

**Policy Period** means the time between 'From' and 'To' noted beside 'Policy Period' in the **Schedule**.

**Policy** means the **Schedule**, the terms of this document and any **Endorsements**.

**Policyholder** means the firm or legal entity shown in the **Schedule**.

**Principal** means a sole practitioner, a partner of a firm or a director of a company.

**Principal Policyholder** means the **Policyholder** or if the **Policyholder** is more than one person or entity, the first person or entity listed as the 'Policyholder' in the **Schedule**.

**Privacy Breach** means an incident involving the unauthorised disclosure, loss, modification, misuse, interference or access of:

- (a) personal information, as defined in the Privacy Act 1988 (Cth), or
- (b) third party corporate information that is identified as confidential.

**Professional Services** means the 'Professional Services' described in the **Schedule**, and no other, of the **Policyholder**.

**Proposal** means the written proposal or declaration made by the **Policyholder** to the **Insurer** containing particulars and statements together with other information provided by the **Policyholder**.

**Public Relations Expenses** means the costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an **Adverse Publicity Event**.

**Relative** means an **Insured's**:

- (i) **Spouse**;
- (ii) parent;
- (iii) children or siblings; or
- (iv) the **Spouse**, parent, child or sibling of a **Relative** specified in (i), (ii) and (iii) above.

**Retroactive Date** means the 'Retroactive Date' as shown in the **Schedule**.

**Schedule** means the current schedule issued by the **Insurer** to the **Policyholder**.

**Spouse** means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

**Subsidiary** means a subsidiary, as defined in the Corporations Act 2001, of the **Policyholder**, which:

- (a) was a subsidiary at the commencement date of the **Policy Period**;
- (b) is created by the **Policyholder** during the **Policy Period**; or
- (c) is a former subsidiary of the **Policyholder**, only in respect of civil liability arising out of any act, error or omission occurring prior to the date such subsidiary ceased to be a subsidiary of the **Policyholder**.

End of Policy wording

