

# Professional Indemnity Policy

Policy Document



**Allianz** 



# General Information

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

## About Steadfast

Steadfast Group Limited (Steadfast) is a public company. It includes a large network of insurance brokerages who operate in Australia as Steadfast Brokers. This policy is available exclusively to you through a Steadfast broker. Steadfast Group Limited does not issue, guarantee or underwrite this policy.

## Important information about Steadfast's advice

Any advice Steadfast gives about this policy does not take into account any of Your particular objectives, financial situation or needs. For this reason, before You act on Steadfast's advice, You should consider the appropriateness of the advice taking into account Your own objectives, financial situation and needs. Before You make any decisions about whether to acquire this policy we recommend You should read this Insurance policy.

## Claims made

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

The policy does not provide cover in relation to:

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

you knew or ought reasonably to have known had the potential to give rise to a claim under this policy;

- claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

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

## General Insurance Code of Practice

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

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

### (a) Dispute resolution process

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

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

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

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

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

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

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

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

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

## Privacy Act 1988

The Privacy Act 1988 contains National Privacy Principles which require us to tell you that as an insurer we collect, handle, store and disclose your personal and sensitive information in order to:

- decide whether to issue a policy,
- determine the terms and conditions of your policy,
- compile data, and
- handle claims.

Sensitive information includes, amongst other things, information about an individual's health, membership of professional associations and criminal records. You have given us your consent to collect your personal and sensitive information in order to issue you with this policy.

We disclose personal information to third parties who we believe are necessary to assist us and them in providing the relevant services and products. For example, in handling claims, we may have to disclose your personal and other information to third parties such as other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents or other parties as required by law. We limit the use and disclosure of any personal information provided by us to them to the specific purpose for which we supplied it.

You have the right to seek access to your personal and sensitive information and to correct it at any time. Allianz Australia aims to ensure that your personal information is accurate, up to date and complete. Please contact us on **13 2664** EST 8am-6pm, Monday to Friday if you would like to seek access to, or revise your personal information or feel that the information we currently have on record is incorrect or incomplete or believe that the privacy of your personal information at Allianz Australia has been interfered with. In these cases you are entitled to raise your concerns. Your complaint will be managed and resolved through our internal Privacy Complaint Procedure.

Should you wish to obtain more information about Allianz's privacy policies, please contact us and ask for a copy of our booklet called "**General Insurance Information Privacy Code**".

From time to time we may advise or offer you information on other Allianz products or services that may be relevant and of interest to you. If you do not wish to receive these offers or information please call the Allianz Direct Marketing Privacy Service Line on **13 2664** EST 8am-6pm, Monday to Friday or indicate your decision in the appropriate area of the Privacy section of our website at [www.allianz.com.au](http://www.allianz.com.au).

## Your Duty of Disclosure

Before you enter into an insurance contract with us, the Insurance Contracts Act 1984 requires you to provide us with the information we need to enable us to decide whether and on what terms your application for insurance is acceptable and to calculate how much premium is required for your insurance.

The Act imposes a different duty the first time you enter into the policy with us to that which applies when you renew, vary, extend, reinstate or replace your policy. We set these two duties out below.

### Your Duty of Disclosure when you enter into this policy with us for the first time

You will be asked various questions when you first apply for this policy. When you answer these questions, you must:

- give us honest and complete answers;
- tell us everything that you know; and
- tell us everything that a reasonable person in the circumstances could be expected to tell us.

### Your Duty of Disclosure when you renew, vary, extend, reinstate or replace your policy

When you renew, vary, extend, reinstate or replace the policy, your duty is to tell us before the renewal, variation, extension, reinstatement or replacement is made, every matter known to you which:

- you know, or
- a reasonable person in the circumstances could be expected to know, is relevant to our decision whether to insure you and whether any special conditions need to apply to your policy.

### What you do not need to tell us for either duty

You do not need to tell us about any matter:

- that diminishes our risk;
- that is of common knowledge;

- that we know or should know as an insurer; or
- that we tell you we do not need to know.

### Who do the two duties above apply to?

Everyone who is insured under the policy must comply with the relevant duty.

### What happens if you or they do not comply with either duty?

If you or they do not comply with the relevant duty, we may cancel the policy or reduce the amount we pay if you make a claim. If fraud is involved, we may treat the policy as if it never existed and pay nothing.

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# Professional Indemnity Policy

## Part 1 – What We Insure You For

### 1. Insuring Clause

#### 1.1 General

We agree to indemnify you against civil liability for compensation (including claimants' costs, fees and expenses awarded against or recoverable from you) arising from any claim first made against you and notified to us during the period of cover in respect of your conduct of the professional activities and duties of the professional business.

#### 1.2 Civil Liability Clarification

For the avoidance of doubt, the indemnity provided by Insuring Clause 1.1 includes, but is not limited to any civil liability incurred or alleged to have been incurred by you in the conduct of the professional activities and duties of the professional business:

- (a) for breach of contract for the provision of professional services; or
- (b) for breach of fiduciary duty; or
- (c) for breach of warranty of authority committed, by you or on your behalf, in good faith and in the belief that appropriate authority was held; or
- (d) for any unintentional infringement of copyright, moral right (under the Copyright Act 1968 (Cth)), trademarks, service marks, registered design or patent, or any plagiarism or breach of confidentiality; or 'unintentional infringement' of copyright; or
- (e) for defamation; or
- (f) under the terms of the Australian Consumer Law, Trade Practices Act 1974 (Cth), the Fair Trading Act (NSW), the Fair Trading Act 1985 (Victoria), Competition and Consumer Act 2010, or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand; or
- (g) in respect of any activity in which you are engaged as a joint venturer, although we are only liable to indemnify you in respect of liability arising out of your acts, errors or omissions and not those of your joint venturer(s).

### 2. Defence Costs

#### 2.1 General

In respect of any claim indemnified by this policy, we agree to pay defence costs that we incur or that you incur with our written consent.

#### 2.2 Advancement of Defence Costs

If we elect not to take over and conduct, in your name, the defence or settlement of a claim, we agree to pay defence costs; (a) that we incur; or (b) that you incur with our written consent within a reasonable time frame following our receipt of invoices specifying such defence costs and prior to determining your entitlement to indemnity for the claim.

In determining your entitlement to indemnity under this policy in respect of a claim, we agree that we will not rely on Exclusion 30 (Fraud and Dishonesty) unless and until:

- (a) you make an admission in writing of any conduct described in Exclusion 30 (Fraud and Dishonesty), or
- (b) it has been established through a judicial process that you have committed any conduct described in Exclusion 30 (Fraud and Dishonesty).

#### 2.3 Reimbursement of Defence Costs Advanced

The payment of any defence costs is subject to the following conditions:

- (a) the payment of any defence costs to you by us does not constitute an acceptance by us of your right to indemnity for any claim;
- (b) if either 2.2(a) or (b) above applies or for any other reason it is determined that a claim is not covered by this policy, you will refund defence costs paid by us, unless we agree in writing to waive recovery of such defence costs.

### 3. Limit of Indemnity

#### 3.1 General

We are only liable to indemnify you against civil liability arising from any one claim up to the limit of indemnity.

#### 3.2 Defence Costs

We agree to pay defence costs in addition to the limit of indemnity. However, if your civil liability arising from a claim exceeds the limit of indemnity, we are only liable to pay the same proportion of the defence costs as the amount of the limit of indemnity bears to the amount of your civil liability in respect of the claim.

### 4. Deductible

#### 4.1 General

- (a) In respect of:
  - (i) each claim made against you;
  - (ii) each claim made by you in respect of Automatic Extensions 12 (Loss of



Documents) and 16 (Official Investigations and Enquiries – **Investigation Costs**); and

- (iii) each **claim** made by **you** for loss pursuant to Optional Extension 21 (Fidelity Guarantee),

the amount of the **deductible** shall be borne by **you** at **your** own risk and **we** shall only be liable to indemnify **you** for that part of any **claim** which is in excess of the **deductible**.

- (b) In the event of a **claim** under this **policy**, **you** shall, if directed by **us**, pay to **us** (or as is directed by **us**) the **deductible** within fourteen (14) working days. Any delay, failure or refusal by **you** to pay the **deductible** will entitle **us** to deduct such amount from any amount(s) required to settle any **claim** or judgment, order, or any other payment to be made by **us** under this **policy**. In the event that a failure or refusal to grant access to monies for any **deductible** results in a failure of a settlement or an increase in **defence costs**, **our** liability in connection with such **claim** shall not exceed the amount for which the **claim** could have been so settled plus the **defence costs** incurred with **our** written consent up to the date of such failure, less the **deductible**.

#### 4.2 Our Investigation Costs

Any costs and expenses that **we** incur to determine whether **we** are liable to indemnify **you** under this **policy** are not subject to the **deductible**. **We** agree to bear any such costs and expenses.

#### 4.3 Your Defence Costs

- (a) Where **we** have elected to pay all or part of the **deductible** in respect of any **claim**, **you** shall, within fourteen (14) working days from the date of such payment, reimburse **us** for such payment.
- (b) In respect of any **claim** where the amount of the **claim** is less than the amount of the **deductible**, **you** shall bear all **defence costs** associated therewith unless **we** have agreed to meet such **defence costs** pursuant to Insuring Clause 2.
- (c) Where the **deductible** is expressed in the **schedule** to be inclusive of **defence costs** then **you** will pay all **defence costs**, up to the amount of the **deductible**, incurred by **us** pursuant to the engagement of advisers considered necessary by **us** to determine **your** liability and to resolve the **claim**.

## Part 2 – Automatic Extensions

### 5. Preamble

- 5.1 **We** shall provide indemnity as is available under this Part of the **policy**, for no additional **premium**, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each Automatic Extension is subject to the **schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **deductible** and other terms of this **policy** (unless otherwise expressly stated herein);
- (b) the inclusion of any Automatic Extension shall not increase the **limit of indemnity**.

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

- 6.1 **We** agree to indemnify **you** against all civil liability arising from any **claim** that is first made during the **period of cover** in respect of any consultant, subcontractor or agent for whose acts, errors or omissions **you** are liable. However, **we** are only liable to indemnify **you** under this clause in respect of an act, error or omission by the consultant, sub-contractor or agent in connection with **your professional business**.

**We** will indemnify any such consultant, sub-contractor or agent themselves, PROVIDED ALWAYS THAT the relevant act, error or omission giving rise to the **Claim** occurred:

- (i) In the course of the conduct, by the consultant, sub-contractor or agent, of the professional activities and duties of the Insured's Business for and on behalf of the named Insured;
- (ii) At the time when the consultant, sub-contractor or agent was under the named Insured's direct control and supervision.

### 7. Continuous Cover

- 7.1 **We** agree to indemnify **you** for any **claim**, otherwise covered by this **policy**, arising from any **known circumstance** (notwithstanding Exclusion 34 (Known Claims and Known Circumstances)) if:
  - (a) **we** were **your** professional indemnity insurer when **you** first knew of such **known circumstance**, and
  - (b) **we** continued without interruption to be **your** professional indemnity insurer up until this **policy** came into effect; and
  - (c) if **we** had been notified by **you** of the **known circumstance** when **you** first knew of it, **you** would have been covered under the **policy** in force at that time but are not now entitled to be covered by the **policy**.

- 7.2 **You** agree that **you** will not seek indemnity from **us** in respect of the **claim** or any **claim** arising out of the **known circumstance** under any other **policy** issued by **us**.
- 7.3 **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**.
- 7.4 The limit of **our** liability provided under this extension is the lesser of the limit of **our** liability under the terms of the **policy** in force at the earlier time referred to in paragraph 7.1(c) above, or the **limit of indemnity** under this **policy**. The terms of this **policy** otherwise apply.

## 8. Estates and Legal Representatives

**We** agree to indemnify **your** estate, heirs, legal representatives or assigns if **you** die, become insolvent, bankrupt or mentally incompetent, to the extent that **we** would otherwise have been liable to indemnify **you**.

## 9. Court Attendance Costs

- 9.1 For any person described in (a) or (b) below who actually attends Court as a witness in connection with a **claim** notified under and covered by this **policy**, it is agreed that **defence costs** will include the following rates per day on which attendance in Court has been required:
- (a) Any person who was or is one of **your** principals, partners or directors: \$500;
  - (b) Any person who was or is one of **your** employees: \$250.

- 9.2 No **deductible** shall apply to this **policy** extension.

## 10. Additional Benefit – Claim Preparation Costs

- 10.1 **We** will pay up to \$25,000 in the aggregate during the **period of cover** for reasonable professional fees and such other expenses incurred by **you** for the preparation of any **claim** that is covered under this **policy**.
- 10.2 The cover provided under this extension operates in addition to the **limit of indemnity**.
- 10.3 PROVIDED ALWAYS THAT such cover shall not include any **defence costs**.

## 11. Fraud and Dishonesty

- 11.1 **We** agree to indemnify **you** arising from any **claim** made against **you**, which would otherwise be excluded by reason of Exclusion 30 (Fraud and Dishonesty), PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided if **you** personally committed or condoned any act, error or omission excluded by reason of Exclusion 30 (Fraud and Dishonesty);
- (b) such indemnity shall not apply to any **claim** against **you** directly or indirectly based upon, attributable to, or in consequence of:
  - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
  - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
  - (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraphs (i) and (ii) above delivered, negotiated or assigned or an electronic record of such a right.

## 12. Loss of Documents

### 12.1 General

**We** agree to indemnify **you** against costs and expenses that **you** incur in replacing or restoring lost **documents** for which **you** are legally responsible where **you** first discover the loss during the **period of cover**. However, **we** are only liable to indemnify **you** against those costs and expenses for which **you** provide **us** with bills or accounts that are approved under sub clause 12.3.

### 12.2 **Your** obligation to notify **us**

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

### 12.3 Approval of bills or accounts

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

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

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

#### 12.4 Deductible

Notwithstanding subclause 4.1, **you** do not have to bear the **deductible** in respect of costs and expenses covered by this clause.

#### 12.5 Meaning of 'lost documents'

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

### 13. Newly Acquired or Created Subsidiary

13.1 **We** agree to include in the definition of **you** any **subsidiary** created or acquired by **you** during the **period of cover** for a period of up to thirty (30) days (but never beyond the expiry date of the **period of cover**) from the date of such creation or acquisition, PROVIDED ALWAYS THAT:

- (a) this extension will only apply in respect of **claims** against the **subsidiary** arising from an act, error or omission occurring subsequent to the date of creation or acquisition of the **subsidiary**; and
- (b) the business of such **subsidiary** is the same as or substantially similar to the professional activities and duties of the **professional business**.

13.2 **You** may apply to **us**, within such thirty (30) day period, to vary this **policy** to continue the cover provided by this extension until the expiry date of the **period of cover**. **You** shall supply **us** with such additional information relating to the new **subsidiary** and pay any reasonable additional **premium** as may be required by **us**.

### 14. Extended Notification Period

14.1 In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of **premium**, then **you** have until the earlier of:

- (a) such time that **you** effect another professional indemnity insurance **policy** either with **us** or any other insurer; or
- (b) a period of sixty (60) days commencing on the day immediately following expiry of this **policy**, during which to notify **us** in writing of any **claim** first made against **you** within such sixty (60) day or lesser period (as the case may be).

14.2 PROVIDED ALWAYS THAT the following conditions apply to cover under paragraph 14.1 above:

- (a) **we** will treat the **claim** as if it had been made against **you** and notified to **us** during the immediately preceding **period of cover**;
- (b) coverage afforded hereunder does not reinstate or increase the **limit of indemnity** or extend the **period of cover**; and

(c) coverage afforded hereunder will only apply to acts, errors or omissions committed or alleged to have been committed by **you**:

- (i) before the end of the **period of cover** or the cancellation date of this **policy** where this **policy** has been cancelled; and
- (ii) after the retroactive date specified in the **schedule**.

### 15. Joint Venture

15.1 If the name of a **joint venture** is included in the **schedule**, then **we** will indemnify **you** for **your** joint and individual civil liability arising out of the conduct of the professional activities and duties of such **joint venture**.

15.2 If the name of the **joint venture** is not included in the **schedule** under 'Joint-Ventures', then **we** will indemnify **you** only for **your** individual civil liability and not for **your** joint civil liability arising out of the conduct of the professional activities and duties of such **joint venture**, PROVIDED ALWAYS THAT the business of such **joint venture** is the same as the **professional business**.

### 16. Official Investigations and Enquiries – Investigation Costs

16.1 **We** agree to pay **investigation costs** PROVIDED ALWAYS THAT:

- (a) **we** shall be entitled, at **our** discretion, to appoint legal representation to represent **you** in the investigation, examination or enquiry;
- (b) the notice of intended investigation, examination or enquiry is served upon **you** during the **period of cover** and is notified to **us** during the same **period of cover**;
- (c) in the event that a **claim** by **you** for payment of **investigation costs** is withdrawn by **you** or indemnity under this extension is subsequently withdrawn or denied by **us**, **we** shall cease to advance **investigation costs** and **you** shall refund any **investigation costs** advanced by **us** to the extent that **you** were not entitled to such **investigation costs**, unless **we** agree in writing to waive recovery of such **investigation costs**; and
- (d) **our** total liability in respect of **investigation costs** for all **claims** made under this extension shall not exceed \$250,000.

### 17. Public Relations Expense

17.1 Where **you** retain the services of a public relations consultant for the sole purpose of protecting **your** reputation that has been brought into question as a direct result of a **claim** covered by this **policy**, **we**

agree to pay any reasonable fees, costs and expenses of such public relations consultant, PROVIDED ALWAYS THAT:

- (a) **you** notify **us** within twenty-eight (28) days of first becoming aware of **your** reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
- (b) **we** have given prior written consent (which consent shall not unreasonably be withheld) to retain the services of such public relations consultant; and
- (c) **our** total aggregate liability during any one **period of cover** for all public relations expenses shall not exceed \$50,000.

## 18. Run Off Cover Until Expiry of the Period of Cover

18.1 **We** agree that in the event that **you** cease to exist or operate or to be a **subsidiary** or become consolidated with, merged into or acquired by any other entity either before or during the **period of cover**, then the coverage provided under this **policy** with respect to such person or entity shall continue until the expiry date of the **period of cover**, PROVIDED ALWAYS THAT such coverage shall only apply in respect of **claims** arising from any act, error or omission occurring prior to the effective date that **you** ceased to exist or operate or were consolidated with, merged into or acquired by another entity.

## 19. Reinstatement

### 19.1 General

If the **limit of indemnity** is exhausted as a result of a **claim** made against **you** during the **period of cover**, **we** agree to reinstate the **limit of indemnity** in clause 3 in respect of any other subsequent unrelated **claim** made against **you**. **We** agree to reinstate the **limit of indemnity** the number of times specified in the **schedule**.

### 19.2 Limit of Indemnity

**We** are only liable to indemnify **you** under this clause against civil liability arising from any one **claim**, and in the aggregate in respect of all **claims**, arising from any one act, error or omission or series of related acts, errors or omissions, up to the **limit of indemnity**.

## Part 3 – Optional Extensions

### 20. Preamble

20.1 It is agreed that:

- (a) the indemnity provided by each Optional Extension is subject to the **schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, **deductible** and other terms of this **policy** (unless otherwise expressly stated herein);
- (b) the inclusion of any optional extension shall not increase the **limit of indemnity**;
- (c) the inclusion of any optional extension shall be at **our** absolute discretion;
- (d) where an Optional Extension is not specified as included in the **schedule**, then the **policy** shall not provide any indemnity in relation to coverage specified under such Optional Extension.

### 21. Fidelity Guarantee

21.1 Notwithstanding Exclusion 30 (Fraud and Dishonesty) **we** agree to provide indemnity to **you** against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to **you** or for which **you** are legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission by any other person or entity covered by this **policy**, PROVIDED ALWAYS THAT:

- (a) such loss is first discovered by **you** during the **period of cover** and is notified in writing to **us** as soon as reasonably practicable after the date of such discovery (but never beyond the expiry date of the **period of cover**);
- (b) **we** shall not be liable to indemnify **you** if **you** committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
- (c) **you** shall bear the burden of adducing satisfactory proof to substantiate a loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and **we** will be under no obligation to provide indemnity to **you** until such time as **we** are satisfied that such loss has, in fact, been sustained;
- (d) all interrelated individual dishonest or fraudulent acts or omissions shall be deemed to constitute a single loss and a single **deductible** shall apply to such loss; and
- (e) **our** liability for each loss under this optional extension and **our** aggregate liability for all losses under this optional extension shall not exceed \$250,000.

## 22. Previous Business

22.1 **We** agree to provide indemnity in respect of any **claim** made against any person who is or becomes or ceases to be, during the **period of cover**, a principal, partner or director of **you** in respect of any kind of civil liability incurred or alleged to have been incurred on the part of such person in the conduct of any professional activities and duties, which were the same as or substantially similar to the professional activities and duties of the **professional business**, before that person joined **you**.

## 23. Multi-year Run-Off after Your Merger, Takeover, Sale, Winding Up

23.1 If the **Insured** is subject to a merger, takeover, sale or winding up, then **we** agree to extend the **period of cover** up to seven (7) years immediately following the expiry of the **period of cover**, PROVIDED ALWAYS THAT this extension will only apply:

- (a) with respect to any **claims** arising from any act, error or omission occurring prior to the effective date of such merger, takeover, sale or winding up; and
- (b) on such terms and conditions, and for such additional **premium**, as **we** may reasonably require.

## Part 4 – Exclusions

### 24. Preamble

**We** shall not be liable under this **policy** to provide indemnity in respect of any:

### 25. Retroactive Date

**Claim** which results directly or indirectly from any act, error or omission occurring or alleged to have occurred prior to the retroactive date specified in the **schedule**.

### 26. Asbestos Exclusion

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance shall not apply to and does not cover any actual or alleged liability whatsoever for any **claim** or **claims** in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

### 27. Pollutants

**Claim** directly or indirectly based on, attributable to, or in consequence of the discharge, dispersal, release or escape of **pollutants** into or upon land, the atmosphere, or any water course or body of water.

### 28. Assumed Duty or Obligation

**Claim** based upon, attributable to, or in consequence of any duty or obligation assumed by **you** by way of any contractual undertaking, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability that **you** would have incurred in the absence of such contractual undertaking, warranty, guarantee or indemnity.

### 29. Fines and Penalties

29.1 **Claim** for punitive, aggravated, multiple or exemplary damages, or fine or penalties imposed by law, PROVIDED ALWAYS THAT this exclusion shall not apply to compensatory civil penalties. **Our** total liability for the payment of compensatory civil penalties during any one **period of cover** shall not exceed \$250,000 in the aggregate, which amount shall form part of and not increase the **limit of indemnity**.

29.2 PROVIDED FURTHER THAT **we** will not be liable to indemnify **you** for any compensatory civil penalty:

- (a) for which **we** are legally prohibited from indemnifying **you** under Australian law; or
- (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;

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

### 30. Fraud and Dishonesty

30.1 **Claim** based upon, attributable to or consequence of:

- (a) any dishonest, fraudulent, criminal or malicious act or omission by **you** or **your** consultants, sub-contractors or agents; or
- (b) any act or omission by **you** or **your** consultants, sub-contractors or agents with the intention of causing a third-party loss, damage or injury or committed with a reckless disregard for the consequences thereof; or
- (c) any wilful breach of any statute, contract or duty by **you** or **your** consultants, sub-contractors or agents.

30.2 PROVIDED ALWAYS THAT this Exclusion shall not apply unless and until:

- (i) **you** make an admission in writing of any conduct described in clauses 30.1(a), (b) and/or (c) above, or
- (ii) it has been established through a judicial process that **you** have committed any conduct described in clauses 30.1(a), (b) and/or (c) above.

### 31. Jurisdictional and Territorial Limits

**Claim:**

- (a) brought in a court of law within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) arising out of the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada or their territories or protectorates; or
- (c) based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

### 32. Obligations to Workers

32.1 **Claim** based upon, attributable to or in consequence of:

- (a) **bodily injury** of any Worker or damage to or destruction of any property of any Worker,

including loss of use of property, arising out of, or in the course of, their employment.

- (b) actual or alleged unlawful discrimination (or other unlawful act, error or omission) by **you** against any worker or employment applicant.

32.2 For the purpose of this exclusion only, the term 'Worker' means any person employed by, or who is deemed to be employed by, **you** pursuant to any Workers Compensation Law.

### 33. Radioactivity and Nuclear Hazards

**Claim** 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.

### 34. Known Claims and Known Circumstances

- (a) known **claims** as at the inception date of this **policy**; or
- (b) **claims** arising from any **known circumstance(s)**; or
- (c) **claims** disclosed in the **proposal**.

### 35. Terrorism Exclusion Endorsement

**Claim** directly or indirectly based upon, attributable to, or in consequence of:

- (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**.

### 36. Trading Debts

**Claim** directly or indirectly based on, attributable to, or in consequence of:

- (a) any trading debt incurred by **you** or any guarantee given by **you** for a debt; or
- (b) the refund of **your** professional fees or charges (by way of damages or otherwise).

### 37. War and Uprisings

**Claim** arising directly or indirectly 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.

### 38. Restrictive Trade Practices

**Claim** directly or indirectly based upon, attributable to, or in consequence of any actual or alleged restrictive trade practices, restraint of trade or unfair competition.

### 39. Related or Associated Entities

**Claim** brought or maintained by or on behalf of any of **you** or any **Subsidiary** or parent of **you**.

## Part 5 – Claims Conditions

### 40. Notification

40.1 **You** shall give to **us**, as soon as practicable, written notice of any **claim** made against **you** PROVIDED ALWAYS THAT such written notice is given to **us** during the **period of cover** in which the **claim** is made.

40.2 Notice of any **claim** shall be given in writing to **us**, and delivered to:

ALLIANZ  
2 Market Street  
Sydney NSW 2000

### 41. Claims Mitigation and Co-operation

41.1 If **you**, either prior to or during the **period of cover**, become aware of a situation which could, if not rectified, lead to a **claim** or increase the quantum of a **claim**, **you** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder. Costs and expenses incurred by **you** in compliance with this clause 41.1 shall be at **your** cost, unless otherwise agreed in writing by **us**.

41.2 **You** shall frankly and honestly disclose to **us** all relevant information and, in addition shall provide assistance to **us**, as **we** may require to enable **us** to investigate and to defend any **claim** under this **policy** and/or to enable **us** to determine **our** liability under this **policy**. Costs and expenses incurred by **you** in compliance with this clause 41.2 shall be paid by **us** in accordance with Automatic Extension 10 (Additional Benefit – Claim Preparation Costs).

41.3 Costs and expenses incurred by **us** to enable **us** to determine **our** liability under this **policy** shall be at **our** own cost.

### 42. Conduct of Proceedings

42.1 **We** shall be entitled if **we** so desire, to take over and conduct in **your** name, the defence or settlement of any **claim** at any time. In the event that this occurs, **we** will then have sole control of the **claim**.

42.2 If **we** retain lawyers to conduct, in **your** name, the investigation, defence or settlement of any **claim**, those lawyers will only act on **our** behalf in relation to any issue regarding **your** entitlement to indemnity from **us** and they will not act on **your** behalf in respect of any such issue. Any information that is received by lawyers retained by **us** in the course of investigating, defending or settling any **claim** against **you** can be provided to **us** and relied upon by **us** in relation to any issue that may arise regarding **our** liability to indemnify **you**. In relation to any such information, **you** waive any **claim** that **you** may have



for legal professional privilege as between **you**, the lawyers retained by **us** and **us**.

42.3 The lawyers retained by **us** to conduct the investigation, defence or settlement of any **claim**, may provide advice to **us** on any issue regarding **our** liability to indemnify **you** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **claim** on behalf of both **us** and **you**.

42.4 **You** agree that all communications between **us** and lawyers retained by **us** to act in the conduct of the investigation, defence or settlement of any **claim** which relates to **you** or entitlement to indemnity from **us** are privileged as between **us** and the lawyers and **you** agree that **you** are not entitled, under any circumstances, to access or obtain any such communications.

42.5 If any actual or apparent conflict arises between **our** interests and **your** interests, the lawyers retained by **us** to conduct the investigation, defence or settlement of any **claim** may cease acting on **your** behalf and may continue to act on behalf of **us** in relation to any dispute between **us** and **you** with respect to **your** entitlement to indemnity from **us**.

### 43. Settlement of Claims

43.1 **You** shall not settle any **claim**, incur any **defence costs** or **investigation costs**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **claim** or loss without **our** written consent, such consent not to be unreasonably withheld. **We** shall not be liable for any settlement, **defence costs**, **investigation costs**, admission, offer or payment, or assumed obligation to which **we** have not consented in writing.

### 44. Your Right to Contest

44.1 In the event that **we** recommend a settlement in respect of a **claim** and **you** do not agree that such **claim** should be settled, then **you** may elect to contest such **claim**. PROVIDED ALWAYS THAT **our** liability in connection with such **claim** shall not exceed the amount for which the **claim** could have been so settled plus the **defence costs** incurred with **our** written consent up to the date of such election, less the **deductible**.

### 45. Senior Counsel

45.1 **We** shall not require **you** to contest the claim unless a **Senior Counsel** (to be mutually agreed upon by **you** and **us**) shall advise that such **claim** should be contested.

45.2 In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by

the plaintiff, the likely **defence costs** and the prospects of **you** successfully defending the **claim**.

45.3 The cost of such **Senior Counsel**'s opinion shall be paid by **us** in addition to the **limit of indemnity**.

### 46. Multiple Claims

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

## Part 6 – Other Conditions

### 47. Alteration to Risk

47.1 You shall give to us written notice as soon as practicable of any material alteration to the risk during the **period of cover** including but not limited to:

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

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

47.3 PROVIDED ALWAYS THAT in the event that you should become bankrupt or insolvent, we shall not be relieved thereby of the payment of any **claim** hereunder because of such bankruptcy or insolvency.

### 48. Subrogation

48.1 In respect of any **claim** covered by this **policy**, and without limiting our rights at law, we shall be subrogated to all your rights of recovery, and you shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of **documents** necessary to enable us effectively to bring suit in your name.

48.2 You shall not, without first obtaining our written consent, do anything or fail to do anything which excludes, limits or prejudices our rights of subrogation. In particular, without limiting the operation of this provision, you shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which you may have in respect of any **claim** covered by this **policy**.

48.3 Should you incur any legal liability which is not covered by this insurance:

- (a) due to the application of any **deductible**; and/or
- (b) where the amount(s) of any judgment(s) exceed(s) the **limit of indemnity** or any applicable sub-limit,

you will be entitled to the first call on the proceeds of all recoveries made, by either you or us, on account of such legal liability until fully reimbursed for such

uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by us) and any remaining amount(s) will be applied to reimburse us.

### 49. Currency

49.1 All amounts referred to in this **policy** are in Australian dollars.

49.2 If you incur liability to settle any **claim** for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or settlement is agreed upon, then, the amount payable by us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian dollars at the free rate of exchange published in the Australian Financial Review on the date on which we pay to you (or some other person at your direction) the indemnity in respect of such award or settlement; subject always to the **limit of indemnity**.

### 50. Assignment of Interest

50.1 No change in, or modification of, or assignment of interest under this **policy** shall be effective except when made by written endorsement to this **policy** and signed by our authorised employee.

### 51. Cancellation

51.1 You may cancel this **policy** at any time by notifying us in writing.

51.2 We may cancel this **policy** in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth). Such cancellation shall take effect thirty (30) days from the time of receipt of notification by you or your insurance broker.

51.3 In the event of cancellation by you or us, we will allow a pro-rata refund of **premium** for the unexpired **period of cover**.

### 52. Severability and Imputation

52.1 We agree that where any one of you:

- (a) failed to comply with the duty of disclosure contained in the Insurance Contracts Act 1984 (Cth); or
- (b) made a misrepresentation to us before this contract of insurance was entered into; or
- (c) fails to comply with any condition of this **policy**, the right to indemnity of any other of you shall not be prejudiced thereby, PROVIDED ALWAYS THAT this clause shall only apply when such other of you:
  - (i) is entirely innocent of and has no prior knowledge of any such conduct; and

- (ii) as soon as is reasonably practicable upon becoming aware of any such conduct, advises **us** in writing of all known facts in relation to such conduct.

52.2 Notwithstanding the above, any fact or knowledge possessed by any past or present, principal, director, chairman, chief executive officer, chief operating officer, chief financial officer, company secretary, chief legal officer or the holder of any similar or equivalent positions shall be imputed to the **Insured**.

### 53. Governing Law

53.1 The construction, interpretation and meaning of the provisions of this **policy** shall be determined in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the exclusive jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this **policy** shall be determined in accordance with the law and practice of such Court.

### 54. GST Basis of Settlement

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

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

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

## Part 7 – Definitions & Interpretation

### 55. Definitions

In this **policy**, unless the context requires otherwise:

- (a) **Bodily Injury** means physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.
- (b) **Claim** means:
  - (i) The receipt by **you** of any written or oral demand for compensation made by a third party against **you**;
  - (ii) Any writ, statement of **claim**, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon **you** which seeks compensatory relief made by a third party against **you**;
  - (iii) For the purpose of Automatic Extension 12 (Loss of Documents) only, a **claim** by **you** for losses described in that extension;
  - (iv) For the purpose of Automatic Extension 16 (Official Investigations and Enquiries – **Investigation Costs**) only, a **claim** by **you** for **Investigation Costs** pursuant to that extension;
  - (v) For the purpose of Optional Extension 21 (Fidelity Guarantee) only, a **claim** by **you** for losses described in that extension;
- in respect of any actual or alleged breach of professional duty.
- (c) **Deductible** means the amount specified as such in the **schedule**.
- (d) **Defence Costs** means the reasonable legal costs and other expenses (including but not limited to legal counsels' fees and experts' fees) incurred by **you** or on **your** behalf with **our** prior written consent (which shall not be unreasonably withheld) or by **us** in the investigation, defence or settlement of a **claim**, or in bringing or defending appeals in connection with a **claim**.
- (e) **Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and **documents** of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
- (f) **Employee** means any person employed by **you** under a contract of service or apprenticeship.

- (g) **Insured** means the person, partnership, company or other entity specified as the **Insured** in the **schedule** including their predecessors in business.
- (h) **Investigation Costs** means reasonable legal costs and other expenses incurred by **you** or on **your** behalf with **our** prior written consent (such consent not to be unreasonably withheld) or by **us** arising out of any attendance by **you** at any official investigation, examination or enquiry where such attendance relates to the conduct of the professional activities of the **professional business** and such investigation, examination or enquiry may lead to a recommendation or finding which might give rise to a **claim**.
- (i) **Joint venture** means the entering into of a venture (by whatever name called) which the **Insured** carries on together with any other person, company, corporation, partnership or other entity not otherwise deemed to be **You** under this **policy**.
- (j) **Joint venturer** means a party to a **joint venture**.
- (k) **Known circumstance** means any fact, situation or circumstance which:
- (i) **you** knew at any time before this **policy** began or before this **policy** was amended/endorsed; or
  - (ii) 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 a **claim** against **you** that might be covered by this **policy** or the amendment/endorsement to this **policy**.
- (l) **Limit of indemnity** means the limit of **our** liability under this **policy** specified as such in the **schedule**.
- (m) **Period of cover** means the period specified as such in the **schedule**.
- (n) **Policy** means:
- (i) the **schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
  - (ii) any endorsement attaching to and forming part of this **Policy** either at inception or during the **period of cover**; and
  - (iii) the **Proposal**.
- (o) **Pollutants** means:
- (i) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
  - (ii) any waste materials including materials recycled, reconditioned or reclaimed; or
  - (iii) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.
- (p) **Premium** means the **premium** specified in the **schedule** or in any endorsement to the **schedule**.
- (q) **Professional business** means the profession, practice, occupation or business specified as such in the **schedule** and/or as described in the nature of business/activities/professional services question in the **Proposal** conducted by the **Insured**.
- If the **Insured** changes its name during the **period of cover** and there is no other change which materially alters the risk, the **professional business** will continue to be covered by this **policy**.
- (r) **Proposal** means the written **proposal** made by **you** to **us** containing particulars and statements which, together with other information provided by **you**, are considered as incorporated herein.
- (s) **Schedule** means the **schedule** relating to this **policy**.
- (t) **Senior Counsel** means a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in the Commonwealth of Australia or the Dominion of New Zealand.
- (u) **Subsidiary** means:
- (i) any entity which by virtue of any applicable legislation or law is deemed to be a **subsidiary** of the **Insured**; or
  - (ii) any entity over which the **Insured** is in a position to exercise effective direction or control.
- (v) **Terrorism** includes any act, or preparation in respect of action, or threat of action designed to influence the government 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:
- (i) involves violence against one or more persons; or
  - (ii) involves damage to property; or
  - (iii) endangers life other than that of the person committing the actions; or
  - (iv) creates a risk to health or safety of the public or a section of the public; or

- (v) is designed to interfere with or to disrupt an electronic system.
- (w) **We, us, our** means Allianz Australia Limited, AFS Licence No 234708, ACN 000 122 850.
- (x) **You, your** means:
  - (i) the **Insured**;
  - (ii) where the **Insured** is a company, any **Subsidiary** in existence at the commencement of this **policy**;
  - (iii) any person who is, during the **period of cover**, a principal, partner or director of the **Insured**, but only in respect of work performed while a principal, partner or director of the **Insured**;
  - (iv) any person who is, during the **period of cover**, an **Employee** of the **Insured**, but only in respect of work performed while an **Employee** of the **Insured**;
  - (v) any former principal, partner, director or **Employee** of the **Insured**, but only in respect of work performed while such person was a principal, partner, director or **Employee** of the **Insured**; and
  - (vi) any consultant, sub-contractor or agent but only to the extent that they are indemnified under Automatic Extension 6 of this **policy**.

## 56. Policy Construction and Interpretation

56.1 The marginal notes and titles of paragraphs in this **policy** are included for descriptive purposes only and do not form part of this **policy** for the purpose of its construction or interpretation.

56.2 Under this **policy**, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a **joint venture** (whether incorporated or unincorporated), a partnership and a trust.

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