

# Architects and Engineers Professional Indemnity

Policy Wording



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# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL incorporated in Australia) ABN 13 000 296 640, trading as Zurich New Zealand. In this policy wording, Zurich New Zealand may also be expressed as 'Zurich', 'we', 'us' or 'our'.

Zurich provides wealth protection and wealth creation solutions, offering general insurance for commercial customers, and life risk, investments and superannuation solutions for corporate and personal customers. Zurich's solutions and services are primarily accessible through insurance brokers, financial advisers and other intermediaries.

Zurich is part of the worldwide Zurich Insurance Group Ltd. It is one of the world's largest insurance companies, with a global network of subsidiaries and offices in Asia Pacific as well as North America, Europe, Latin America and other markets. Founded in 1872, the Group is headquartered in Zurich, Switzerland. It employs approximately 60,000 people serving customers in more than 170 countries.

## Important information

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

1. A *claim* is made against the *insured* by some other person, and notified to us during the period when the policy is in force; and
2. The *claim* arises out of an occurrence which takes place after the *retroactive date* stipulated in the policy *schedule*.

## Duty of Disclosure

Before the *insured* enters into a contract of general insurance with us, the *insured* has a duty to disclose to us every matter they know, or could reasonably be expected to know, is relevant to our decision whether to insure the *insured* and, if so, on what terms. This applies to all persons to be covered under this contract of insurance.

The *insured* has the same duty to disclose those matters to us before they renew, extend, vary or reinstate a contract of general insurance. This duty however, does not require disclosure of a matter that:

- diminishes the risk to be insured;
- is of common knowledge;
- we know or in the ordinary course of our business we ought to know;
- we indicate to the insured that we do not want to know.

## Non-disclosure or Misrepresentation

If you make a material misrepresentation to us, or if you do not comply with your duty of disclosure we may treat your policy as if it never existed.

## Our contract with you

This policy is a contract of insurance between the *insured* and Zurich and contains all the details of the cover that we provide.

This policy is made up of:

- the policy wording. It states what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission* which is the information you provide to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to the *insured*. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured. Please keep the policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Architects and Engineers Professional Indemnity

Subject to payment of the premium set out in the *schedule*, Zurich agrees to provide insurance on the terms set out in this policy, including any operative Extensions of Cover and any attaching endorsements.

## 1. Insuring Clause

We agree to indemnify the *insured* against *loss* incurred as a result of any *claim* for *civil liability* first made against the *insured* and notified to us during the *period of insurance*, based solely on the *insured's* provision of the *professional services*.

## 2. Limit of Liability

Subject to Extension of Cover 3.23 'Reinstatement', our total liability toward any and all *insureds* in respect of all *loss*, directly or indirectly arising out of or in connection with:

- any single *claim*;
- all *claims* referable to the *period of insurance*;
- all *losses* otherwise covered under the policy,

shall not exceed the respective *limit of liability* or other applicable sub-limit prescribed in the policy and/or *schedule* and shall apply only to the amount by which such *loss* exceeds the prescribed amount of the applicable *deductible*. For the purposes of application of the *limit of liability* and the *deductible*, all *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be deemed to be a single *claim*.

### 2.1 Claim expenses – exclusive of Limit of Liability

Where the *limit of liability* in the *schedule* is specified to be exclusive of *claim expenses*, we agree, in addition to the *limit of liability*, to pay the *claim expenses* of any *claim* which is the subject of indemnity under the Insuring Clause, except:

- 2.1.1 where the *insured's* liability exceeds the available *limit of liability*, we shall only pay such proportion of the *claim expenses* as the available *limit of liability* bears to the *insured's* liability;
- 2.1.2 where the amount we have paid or incurred as *claim expenses* exceeds the share that we are obliged to pay, the *insured* shall upon demand pay to us the excess amount or alternatively, we may deduct the excess amount from any entitlements the *insured* may have at any time under this policy.

### 2.2 Claim expenses – inclusive of Limit of Liability

Where the *limit of liability* in the *schedule* is specified to be inclusive of *claim expenses*, we agree to pay the *claim expenses* of any *claim* which is the subject of indemnity under the Insuring Clause, however the total of our liability together with the *claim expenses* shall not exceed the *limit of liability*.

## 3. Extensions of Cover

Cover is automatically provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the extensions of cover described below. Each extension of cover is subject to all the other provisions of this policy, including any additional terms stipulated in connection with it. No feature shall increase our *limit of liability* unless expressly stated otherwise.

### 3.1 Claims preparation costs

We will pay all reasonable and necessary out of pocket costs incurred by the *insured* at our request in the preparation of a submission that a *claim* is covered by this policy up to an aggregate amount of \$25,000 which is included within and not in addition to the *limit of liability* in respect of all *claims* potentially covered by this policy.

Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$1,000.

Payments provided under this extension, shall not include any *claim expenses*.

### 3.2 Compensatory penalties

Notwithstanding the Definition of *civil liability* and Exclusion 6.1 in respect of 'Aggravated, Punitive or Exemplary Damages, Fines or Penalties', we cover *claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated *claim expenses* under the policy shall not exceed \$250,000 in the aggregate for all *claims*, which is included within and not in addition to the *limit of liability*.

However, we will not be liable to cover the *insured* for any compensatory civil penalty:

- 3.2.1 for which we are legally prohibited at law from indemnifying the *insured*;
- 3.2.2 based upon, attributable to or in consequence of any:
  - 3.2.2.1 wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - 3.2.2.2 gross negligence or recklessness; or
  - 3.2.2.3 requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### 3.3 Consultants, Subcontractors and Agents

We agree to indemnify the *insured* for *loss* resulting from any *civil liability claim* arising from the conduct of any consultants, *sub-contractors* or *agents* of the *insured* for which the *insured* is legally liable in the provision of the *professional services*. No indemnity is available to the consultants, *sub-contractors* or *agents*.

### 3.4 Continuous cover

If the *insured* has neglected to notify a matter, through error or oversight only, in relation to an earlier policy issued by us of the same type as this one, then provided that the *insured* has maintained uninterrupted insurance of the same type with us since the expiry of that earlier policy then, notwithstanding Exclusion 6.14.1 'Prior and pending', we will permit the matter to be reported under this policy and will indemnify the *insured* in respect of any *claim* arising from the matter on the conditions that:

- 3.4.1 the indemnity will be subject to the applicable *limit of liability* of the earlier policy under which the matter should have been reported to us;
- 3.4.2 we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which we have suffered as a result of the delayed notification;
- 3.4.3 the indemnity will be subject to all of the terms, conditions, definitions and exclusions, other than the *limit of liability*, contained in this current policy; and
- 3.4.4 you hereby agree that you will not seek indemnity from us in respect of any such *claim* under both policies issued by Zurich.

### 3.5 Court attendance costs

We agree to provide up to \$500 per day for court attendance costs incurred by any natural person who is an *insured*, if they are legally compelled to attend a civil proceeding as a witness in a *claim* covered by this policy.

Our total aggregate liability during any one *period of insurance* for all court attendance shall not exceed \$50,000 and shall be part of and not in addition to the *limit of liability* as shown in the policy *schedule*.

### 3.6 Dishonesty

Notwithstanding Exclusion 6.7 in respect of 'Fraud and Dishonesty', we agree to indemnify the *insured* for *loss* resulting from any *civil liability claim* alleging conduct of the *insured* or any *agent* in the provision of *professional services* that falls or may fall within that exclusion. Provided that:

- 3.6.1 no indemnity is available to the dishonest *employees* or *agents* themselves, or at all where any *insured* has knowingly engaged in or condoned such conduct;
- 3.6.2 no indemnity is available in respect of a *claim* arising from or in any way connected with the loss of *money*.

### **3.7 Estates and Legal representatives**

We agree to indemnify the estate, heirs, legal representatives or assignees of a natural person who is an *insured* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insured* would be entitled to be indemnified in respect of a *claim* made against them. This clause only provides an indemnity in accordance with the Insuring Clause in respect of *claims* solely based on the conduct of the relevant *insured*.

It does not respond where the conduct is that of an *insured's* estate, heir, legal representative or assignee.

### **3.8 Extended notification period**

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium, then the *insured* has until such time that the *insured* effects another professional indemnity insurance policy either with us or any other insurer or a period of 60 days commencing on the day immediately following expiry of this policy, whichever is the lesser period, during which to notify us of any *claim* first made against the *insured* in writing within such 60 day or lesser period (as the case may be). Provided always that it is understood and agreed that:

- 3.8.1 we will treat that *claim* as if it had been made against the *insured* and notified to us during the immediately preceding *period of insurance*; and
- 3.8.2 coverage afforded thereunder does not reinstate or increase the *limit of liability* or the aggregate *limit of liability* or extend the *period of insurance*; and
- 3.8.3 coverage afforded thereunder will only apply to acts, errors or omissions committed or alleged to have been committed by the *insured* before the end of the *period of insurance* or the cancellation date of this policy where this policy has been cancelled and not before the *retroactive date*.

### **3.9 Fair Trading Act**

We agree to indemnify the *insured* for a *civil liability claim* alleging a breach of sections 9 to 14 of the Fair Trading Act 1986 or any similar trading legislation of the jurisdiction specified in the *schedule*.

### **3.10 First party copyright infringement**

We will pay on behalf of the *insured* any reasonable costs and expenses necessarily incurred in any proceedings for any injunction, damages or infringement of any copyright vested in by the *insured*, and notified to us during the *period of insurance*. Provided that we will not be required to incur any obligation to meet such costs where the cause of action is not one that is reasonable to pursue by the *insured*. In the event of any dispute arising between the *insured* and Zurich as to the reasonableness of pursuing any such cause of action, the opinion of a Senior Counsel the appointment of whom will be mutually agreed between the *insured* and Zurich will be obtained and their decision will be binding. If we cannot agree on the appointment of a Senior Counsel the chairman of the Bar Association will appoint one.

The coverage provided by this extension is always subject to Exclusion 6.21 'USA / Canada exposure' even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this policy.

Our total aggregate liability during any one *period of insurance* for this extensions of cover shall not exceed \$25,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*.

### **3.11 Inquiries**

We will pay on behalf of the *insured* the *inquiry costs* which the *insured* incurs in preparing for and attending an *inquiry* provided that a notice requiring the *insured* to attend the *inquiry* is first served upon the *insured* during the *period of insurance* and reported to us during the *period of insurance*.

Our total aggregate liability during any one *period of insurance* for *inquiry costs* for all *inquiries* for all *insureds* shall not exceed \$250,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*.



### 3.12 Intellectual property including Breach of confidentiality

We agree to indemnify the *insured* for loss resulting from any *civil liability claim* resulting from any unintentional infringement of copyright, trademarks, service marks, registered designs, patents or any unintentional plagiarism or unintentional breach of confidentiality by the *insured*.

The coverage provided by this extension is always subject to Exclusion 6.21 'USA / Canada exposure' even in the event that the exclusion has been deleted in respect of the remainder of coverage provided by this policy.

### 3.13 Joint venture

We agree to indemnify the *insured* for loss resulting from any *civil liability claim* arising from activities in which the *insured* is engaged in the provision of the *professional services*, as a partner in a joint venture. No indemnity shall be available hereunder to the *joint venture partner(s)*.

### 3.14 Libel, slander and defamation

We agree to indemnify the *insured* for loss resulting from any *civil liability claim* for unintentional libel, unintentional slander or other unintentional defamation by an *insured* in the provision of the *professional services*.

### 3.15 Limitation of liability contracts

Notwithstanding Claims Condition 7.10 'Subrogation' we recognise that the *insured* will enter into contracts with other parties relating to the performance of the *professional services* which may waive or otherwise limit the liability of such parties. We agree that such contracts will not prejudice the *insured's* right to indemnity under the policy. However the cover provided by this extension shall not apply to contracts (whether written or otherwise) entered into as a result of a dispute which in any way involves the *insured*.

### 3.16 Loss of documents

Notwithstanding Exclusion 6.13 in respect of 'Personal injury / property damage', we agree to indemnify the *insured*:

3.16.1 for any *claim for civil liability* made against the *insured* for loss, damage or destruction of any *documents* and/or computer records belonging to the *insured* or for which the *insured* is legally responsible, where the loss, damage or destruction occurs in the provision of the *professional services* after the *retroactive date*; and

3.16.2 for all reasonable costs and expenses incurred by the *insured* in replacing and/or restoring such *documents*.

However,

- (i) we shall only be liable where any such loss, damage or destruction is notified to us within the *period of insurance* and rectification of which is undertaken as soon as practicable by the *insured* with our prior written consent, such consent not to be unreasonably withheld;
- (ii) we shall not be liable for any *claim* in 3.16.1 or costs and expenses in 3.16.2 directly or indirectly arising out of or in connection with computer virus, operational wear and tear or gradual deterioration however caused;
- (iii) we shall not be liable for any *claim* in 3.16.1 or costs and expenses in 3.16.2 directly or indirectly arising out of or in connection with any loss of *money*.

The *limit of liability* for this feature applies to all *claims* covered under 3.16.1 above, inclusive of *claim expenses*, and costs and expenses in 3.16.2 above, are in the aggregate. Notwithstanding the *deductible* specified in the *schedule* this extension will be subject to an excess of \$5,000 or the *deductible* shown in the *schedule* whichever is the lesser.

### **3.17 Merger / takeover / sale / winding-up of insured – run-off coverage**

If during the *period of insurance* the *insured* is subject to a merger, takeover, sale or winding-up, then coverage in accordance with the Insuring Clause shall continue through to the expiry of this policy, but shall apply only for *civil liability claims* resulting from the *professional services* provided or allegedly provided prior to the effective date of the merger, takeover, sale or winding-up.

Upon application by the *insured* and subject to written agreement by us prior to expiry of the *period of insurance*, and subject as well to payment of any additional premium required by us (to be paid in full immediately upon expiry of this *period of insurance*) cover provided in accordance with this feature may be extended for an additional *period of insurance* of up to 84 months as may be determined by agreement between the *insured* and Zurich.

### **3.18 Newly created / acquired subsidiary**

We agree to indemnify in accordance with the Insuring Clause any new *subsidiary* created or acquired by the *policyholder* during the *period of insurance*. The following terms apply to this extension:

- 3.18.1 cover only applies to conduct of the new *subsidiary* occurring within a period of 45 days from the date of the creation or acquisition of the *subsidiary*;
- 3.18.2 cover only applies to such *claims* arising from conduct which occurred or is alleged to have occurred subsequent to the date of acquisition or creation of the *subsidiary*;
- 3.18.3 during the time in 3.18.1 above, the *policyholder* shall supply such additional information relating to the new *subsidiary* as may be required by us and pay any additional premium as may be required to enable us to continue coverage to the expiry date of the policy.

### **3.19 Principal's indemnity**

To the extent that it is contractually required of the *insured*, we shall also indemnify any Principal in regards to *professional services* undertaken by or on behalf of the *insured* for any *civil liability claim* against a Principal, provided that:

- 3.19.1 the *claim* is such that if made upon the *insured*, the *insured* would be entitled to indemnity under the policy;
- 3.19.2 we shall have the conduct and control of all *claims* for which the Principal seeks indemnity hereunder or from the *insured*;
- 3.19.3 this policy shall not extend to provide cover in respect of the Principal's own *civil liability* or other events not covered by this *policy* and the terms and conditions of this policy otherwise apply.

For the purpose of this clause, the Principal shall be deemed to be an *insured*. Nothing in this clause shall preclude the *insured* (not being the Principal) from the right to indemnity under this policy should the Principal instigate proceedings against such other *insured* for a *claim* which results from the provision of *professional services*, in the Principal's own right.

### **3.20 Privacy**

We agree to indemnify the *insured* for loss resulting from a *claim* for *civil liability* which is made during the *period of insurance*, which alleges unlawful interference with or breach of privacy by the *insured* in the provision of the *professional services*.

### 3.21 Public relations expenses

Where the *insured* retains the services of a public relations consultant for the sole purpose of protecting the *insured's* reputation that has been brought to question as a direct result of a *claim* covered by this policy, we agree to pay any reasonable fees, costs and expenses of a duly qualified public relations consultant on the basis that:

- 3.21.1 the *insured* notifies us within 30 days of first becoming aware of the *insured's* reputation being brought into question and provide full written details outlining the *circumstances* surrounding the event; and
- 3.21.2 we have given prior written consent to retain the services of such public relations consultants; and
- 3.21.3 our total aggregate liability during any one *period of insurance* for all public relations expenses shall not exceed \$50,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*.

### 3.22 Reduction of deductible

Notwithstanding the provisions of General Condition 8.6 'Deductible', where the *deductible* for this policy is \$50,000 or less, we agree to reduce it by 50% in respect of any *claim* where such *claim* is settled or disposed of in accordance with the *insured's* obligations under this policy without the involvement of any lawyer for any party, including but not limited to the *insured*, any third party or Zurich.

### 3.23 Reinstatement

In the event that the *limit of liability* under this policy has been entirely exhausted during the *period of insurance*, by *claims* or *loss* indemnified or for which we have agreed to indemnify, the *limit of liability* will be reinstated by the same amount, once only, conditional upon the following:

- 3.23.1 that the reinstated *limit of liability* shall only apply to *claims* or *loss* which do not arise out of and do not have any connection with the source or originating cause of any of the *claims* or *loss* already paid or payable out of the original *limit of liability*;
- 3.23.2 that all other terms, conditions, exclusions and limitations of the policy shall continue to apply, in the same manner, in respect of *claims* and *loss* to which the reinstated *limit of liability* applies;
- 3.23.3 that the *insured* has satisfied us that they have no other valid and collectible excess or other insurance to call upon, after exhaustion of the original *limit of liability*, or that all such insurance (including any automatic reinstatement entitlement to which those policies may be subject) has also been exhausted by *claims* or *losses* indemnified or for which the insurers in question have agreed to indemnify; and
- 3.23.4 there shall be no reinstatement at all of any sub-*limit of liability*.

### 3.24 Technology services

We agree to indemnify the *insured* for *loss* resulting from any *civil liability claim* for *technology services*, where they are performed for the purpose of providing the *professional services* as detailed in the *schedule*.

Our total aggregate liability during any one *period of insurance* for all *technology services* shall not exceed \$250,000 and shall be part of and not additional to the *limit of liability* as shown in the policy *schedule*.

## 4. Optional Extension of Cover

Cover is provided, and on the same terms and in the same manner as in the Insuring Clause (except as expressly stated), for the features described below. Each feature is subject to all other provisions of this policy, including any additional terms stipulated in connection with it and shall apply only if they are specifically noted as 'Included' in the policy *schedule*.

### 4.1 Contractual liability

Notwithstanding Exclusion 6.4 'Contractual liability and Commercial risks' sub-section 6.4.1, we will indemnify the *insured* against *civil liability* arising from a *claim* under an indemnity and or hold harmless provision of a contract, to the extent that such *civil liability* arises from the *insured's* performance of *professional services*.

## 5. Definitions

When used in this policy, the *schedule* and its endorsements the following definitions shall apply:

### 5.1 Act of terrorism

*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 or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

### 5.2 Agent

*agent* means a natural person or company or other entity that has a contract with the *insured* under which the *insured* engages the natural person or company or other entity to act for or on behalf of the *insured* in the provision of *professional services*.

### 5.3 Circumstances

*circumstances* shall mean any incident, occurrence, fact or matter which may give rise to a *claim*.

### 5.4 Civil liability

*civil liability* means liability of the *insured* on any civil cause of action for *compensation*, based solely on its provision of, or failure to provide, the *professional services*. It does not include any liability, of whatever nature and however arising, for aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions.

### 5.5 Claim

*claim* shall mean any oral or written demand for *compensation* received by the *insured* during the *period of insurance* including but not limited to a civil proceeding commenced by the service of a statement of claim, writ, complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding.

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim*, for the purposes of the *limit of liability* and the *deductible*.

### 5.6 Claim expenses

*claim expenses* shall mean all reasonable legal costs and expenses necessarily incurred with our prior written consent in the investigation, defence and settlement of any *claim*.

*Claim expenses* shall not include any internal overhead expenses or costs incurred by an *insured* and any salary or remuneration of any *employee*.

All *claim expenses* shall be included in the *limit of liability*.

### 5.7 Compensation

*compensation* shall mean monetary compensation the *insured* is legally obligated to pay, whether by a judgment or award, or a settlement negotiated with our prior written consent, but does not include *claim expenses*.

### 5.8 Deductible

*deductible* means the amount stated in the *schedule*, being either exclusive or inclusive, which shall be the responsibility of the *insured*, as applicable, in respect of each *claim* or request for indemnity under the policy.

### 5.9 Director or officer

*director or officer* shall mean any natural person who was or now is a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) or who becomes a director or officer of the *policyholder* or any *subsidiary* (or the equivalent position in any jurisdiction) during the *period of insurance*, including de jure, de facto and shadow directors.

#### **5.10 Document**

*document* includes all documents whether in soft or hard copy form (excluding *money*) belonging to the *insured* or for which the *insured* is legally responsible, whilst in custody of the *insured*, or in the custody of any person to or with whom they have been entrusted, lodged or deposited by the *insured* in the ordinary course of the *professional services* performed by the *insured*.

#### **5.11 Employee**

*employee* means any person, other than a *director* or *officer* of the *insured*, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the *insured*, solely in connection with the *professional services* provided by the *insured*. This definition does not include *sub-contractors*.

#### **5.12 Inquiry**

*inquiry* means any complaints or disciplinary hearing or investigation into the actions of the *insured* by any statutory or professional body which claims jurisdiction to inquire or adjudicate in relation to the provision of the *professional services* by an *insured* if the findings from such inquiry or hearing could lead to a *claim* being made against the *insured* which may be covered under this policy.

#### **5.13 Inquiry costs**

*inquiry costs* means reasonable legal, assessors, adjusters and expert witness costs incurred with our written consent but does not include the *insured's* salaries, wages, travel or accommodation expenses.

#### **5.14 Insolvency**

*insolvency* means in relation to any *insured*:

- 5.14.1 being under administration or insolvent, each as defined in the Insolvency Act 2006;
- 5.14.2 having a controller (as defined in the Insolvency Act 2006) appointed;
- 5.14.3 being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, under administration, wound up, subject to any scheme of arrangement, assignment, composition or other form of moratorium or protection from creditors or in bankruptcy;
- 5.14.4 being otherwise unable to pay any debts as and when they fall due;
- 5.14.5 having anything with the same or similar effect happen under the laws of any jurisdiction.

#### **5.15 Insured**

*insured* means the following:

- 5.15.1 the *policyholder* and any *subsidiary* at inception of the policy (or as otherwise agreed by us to be covered under Extension of Cover 3.18 'Newly created / acquired subsidiary'); or
- 5.15.2 the predecessors in business of the *insured* as stated in 5.15.1 above; or
- 5.15.3 any current or former partner, principal or *employee* of the *policyholder* or any *subsidiary* in 5.15.1 above, but only whilst providing *professional services* on behalf of the *policyholder* or such *subsidiary*.
- 5.15.4 any legal entity which is or becomes during the *period of insurance* a contractor of the *insured*, but only in respect of work performed for and on behalf of the *insured* and such contractor;
  - 5.15.4.1 is retained to provide *professional services*; and
  - 5.15.4.2 receives for *professional services* rendered for and on behalf of the *insured* more than 90% of their annual income from the *insured*.

'You' and 'Your' is also used in this policy to mean one or more of the *insured*.

#### **5.16 Joint venture partner(s)**

*joint venture partner* means any person or entity with whom the *insured* is engaged in a common venture, including any jointly owned company or corporation incorporated or designated for the purpose.

### **5.17 Limit of liability**

*limit of liability* means the Limits of Liability stated in the *schedule*.

### **5.18 Loss**

*loss* means the following for which the *insured* is legally liable:

- 5.18.1 *compensation* and/or claimant's costs pursuant to an award or judgment against the *insured*;
- 5.18.2 settlements negotiated by us and consented to by the *insured*;
- 5.18.3 settlements negotiated by the *insured* but only with our prior written consent;
- 5.18.4 *claim expenses*;
- 5.18.5 *inquiry costs*.

But *loss* does not include:

- (i) wages, salary, commission, fees, charges and other form of remuneration or profit to be repaid, lost or foregone by the *insured*, as a result of a *claim*;
- (ii) any component of an award or settlement which represents the cost of performance of the *insured's* original contractual obligations, non-fulfilment or negligent performance of which has given rise to the *claim*.

For the purpose of the *limit of liability*, sub-limits and other applicable terms and conditions of the policy, *loss* also includes all other amounts covered by the policy, including those amounts which are not dependent upon the making of a *claim* against the *insured*.

### **5.19 Money**

*money* means money, negotiable instruments, shares, bonds, coupons, stamps, bank or currency notes, or precious metals.

### **5.20 Novated contract**

*novated contract* means the contract(s) specified by endorsement to the policy.

### **5.21 Period of insurance**

*period of insurance* means the Period of Insurance stated in the *schedule* and any extension thereof which may be agreed between Zurich and the *insured*.

### **5.22 Personal injury**

*personal injury* means bodily injury, mental injury, mental anguish, shock, sickness, disease or death.

### **5.23 Policyholder**

*policyholder* means the legal entity as specified in the *schedule*.

### **5.24 Pollutants**

*pollutants* means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

### **5.25 Property damage**

*property damage* means any damage to or destruction of any tangible property including loss of use thereof and any consequential loss directly resulting there from.

### **5.26 Professional services**

*professional services* means those activities specified in the *schedule* performed by the *insured*. It does not include in the provision of services as a superannuation trustee in any respect, or acting in a capacity as a *director* or *officer*.

### **5.27 Proposal**

*proposal* shall mean any information and/or statements or materials supplied to us including any application form completed and signed by the *policyholder* and any attachments thereto.

### **5.28 Retroactive date**

*retroactive date* means the Retroactive Date specified in the *schedule*.

### **5.29 Schedule**

*schedule* means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

### **5.30 Sub-contractors**

*sub-contractors* mean independent consultants or sub-contractors who provide services to the *insured* under a written or oral contract. This definition does not include any *employee*.

### **5.31 Submission**

*submission* means:

- 5.31.1 any information and/or statements or materials; and
- 5.31.2 any proposal form completed and signed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and
- 5.31.3 the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### **5.32 Subsidiary**

*subsidiary* means any company or other legal entity over which the *policyholder* exercises effective governance or control or in respect of which the *policyholder* directly or indirectly:

- 5.32.1 controls or controlled the composition of the board of directors; and/or
- 5.32.2 controls or controlled more than half of the voting power; and/or
- 5.32.3 holds or held more than half of the issued share capital or other ownership of the entity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the *insured* pursuant to the Company Law or the applicable New Zealand accounting standard.

### **5.33 Technology services**

*technology services* means:

- 5.33.1 website design or website programming;
- 5.33.2 database design or database management, data warehousing, data application hosting, cloud storage;
- 5.33.3 maintenance of computer programs, applications or systems designed or developed by the *insured*;
- 5.33.4 design and development of computer software programs, applications or systems;
- 5.33.5 creation, maintenance, use, modification, alteration, and input into any digital model or digital representation, including, for example, a Building Information Model (BIM) or other computer assisted design or drafting system or program; and
- 5.33.6 electronic data transmissions in conjunction with any of the above.

### **5.34 Territorial limits**

*territorial limits* means the Territorial Limits specified in the *schedule*.

## 6. Exclusions

We will not pay anything in respect of:

### 6.1 Aggravated, Punitive or Exemplary Damages, Fines or Penalties

any *claim* arising out of, based upon, attributable to or as a consequence of:

- 6.1.1 fines, taxes, penalties, exemplary, punitive, or aggravated damages; or
- 6.1.2 the return, restitution, or offset of fees, expenses or costs paid to an *insured*; or
- 6.1.3 contractual penalties; or
- 6.1.4 any other damages deemed uninsurable in law.

### 6.2 Building defects

any *claim* directly or indirectly arising from or in connection in way whatsoever with:

- 6.2.1 the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the First Schedule to the Building Regulations 1992 or any applicable New Zealand Standard (or amended or substituted regulation or standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- 6.2.2 mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

### 6.3 Building inspection

any *claim* directly or indirectly arising from or in connection in way whatsoever with the carrying out of any pre purchase property inspection report, whether oral or written.

### 6.4 Contractual liability and Commercial risks

any *claim* arising from or in connection with:

- 6.4.1 any contractual liability or assumed liability, unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability;
- 6.4.2 any liability assumed by an *insured* under any guarantee or warranty unless the *insured* would in any event be legally liable in the absence of such guarantee or warranty;
- 6.4.3 any trading debt incurred by the *insured*;
- 6.4.4 the failure to provide, effect or maintain any bond, surety or insurance; or
- 6.4.5 the *insolvency*, receivership, administration, bankruptcy or any party involved in any project.

### 6.5 Directors and officers

any *claim* directly or indirectly arising from or in connection with any *insured* acting in the capacity of a *director* or *officer* of a company, association or other legal entity.

### 6.6 Employer's liability

- 6.6.1 any *claim* for any bodily injury, sickness, disease, nervous shock, mental disorder or death of any actual or deemed *employee* of the *insured* or for the destruction or loss or damage to any tangible property belonging to an actual or deemed *employee*, including loss of use thereof, arising in the course of their employment;
- 6.6.2 any *claim* arising out of any obligation for which the *insured* or any carrier as its Insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits law or any other similar law.



## **6.7 Fraud and Dishonesty**

- 6.7.1 any actual dishonest, fraudulent, criminal, wilful or malicious conduct of any *insured*;
- 6.7.2 any *civil liability* incurred by the *insured* which arises from conduct of the *insured* or their *agent* which is established to have been committed with a reckless disregard for the consequences thereof; or
- 6.7.3 any wilful breach of any statute, contract or duty by any *insured* or their *agent*.

## **6.8 Insolvency**

any *claim* made against the *insured*, where all or part of such *claim* is directly or indirectly based upon or attributable to the *insolvency* of the *insured* or the suppliers and/or *sub-contractors* of the *insured*.

## **6.9 Licensing inquires**

any prosecution, *inquiry*, hearing, commission or other investigation in relation to the *insured* failing to be properly licensed, registered or accredited to provide *professional services* as required by any Acts, rules, regulations or industry codes of practice.

## **6.10 Manufacturing / Efficacy**

any *claim*, *loss* or other amount comprising, directly or indirectly arising out of or in connection with:

- 6.10.1 the repair, replacement, diminished utility or lack of efficacy for their intended purpose of any goods, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 6.10.2 the cost of remedying any defect in any goods, manufactured, imported, sold, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the *insured*;
- 6.10.3 any cost of or expense incurred in withdrawing a product or good from sale or recalling any product or good;
- 6.10.4 any element of any of the *insured's* own costs or profit that may be included in the cost of rectifying any defects in work performed by or on behalf of the *insured*.

## **6.11 Money and Negotiable instruments**

any *claim* directly or indirectly arising from or in connection with any loss of *money*.

## **6.12 Owners and Occupiers liability**

any *claim* directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by the *insured*.

## **6.13 Personal injury / Property damage**

- 6.13.1 any liability for *personal injury* suffered or incurred by any entity or person; and/or
- 6.13.2 any loss of property or *property damage*;

other than as the direct result of *professional services* having been or being performed, undertaken or provided by or on behalf of the *insured*.

## **6.14 Prior and Pending**

any *claim* made against or in any way intimated to the *insured* prior to the commencement of the *period of insurance* or directly or indirectly arising from or attributable to:

- 6.14.1 any facts or *circumstances* of which the *insured* was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against the *insured* might arise;
- 6.14.2 any facts or *circumstances* reported to an insurer under any insurance policy entered into before the commencement of the *period of insurance*; or
- 6.14.3 any facts disclosed to any insurer in any *submission* for insurance prior to the commencement of the *period of insurance*.

#### **6.15 Project and Construction management**

any *claim* directly or indirectly arising from or in connection in anyway whatsoever with:

- 6.15.1 any failure to effect or maintain insurance, or advice on insurance; or
- 6.15.2 advice on financial or tax matters; or
- 6.15.3 the provision of finance; or
- 6.15.4 any estimate of probable construction cost or cost estimate being exceeded; or
- 6.15.5 any work which is supervised or normally supervised by any consultant or sub-contractor including but not limited to any architect, building contractor, engineer, tradesperson or foreman.

#### **6.16 Project specific insurance**

any *claim* arising out of any project that is *insured* under a project specific insurance policy, provided that this exclusion shall not apply where the *insured's* liability is in excess of the limits of liability available under such project specific insurance.

#### **6.17 Radioactivity / pollution / asbestos**

any *claim* arising out of, based upon attributable to or as a consequence of:

- 6.17.1 ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof;
- 6.17.2 seepage, pollution or contamination of any *pollutant* by whatever nature and however occurring;
- 6.17.3 mould, legionella bacteria or any other organism or substance found upon any premises however it came to be there;
- 6.17.4 asbestos or any material or property containing or alleged to contain asbestos, in whatever form or quantity and however arising;
- 6.17.5 silicon or silica, or any material, substance or property derived from or containing or allegedly containing silicon or silica, in whatever form or quantity and however arising.

#### **6.18 Related entities**

any *claim* made against the *insured* by or on behalf of:

- 6.18.1 any *insured* (in whatever capacity), business venture or related or associated entity of any *insured* which is owned, managed or operated directly or indirectly by any *insured*; or
- 6.18.2 any person who at the time of the conduct giving rise to the *claim*, is a family member, unless such person is acting without the co-operation or solicitation of any *insured*;
- 6.18.3 any *joint-venture partner* of any *insured*;
- 6.18.4 any parent or controlling entity, successor or assign of any *insured*;
- 6.18.5 any other person or entity, including but not limited to a trustee:
  - 6.18.5.1 who or which is controlled or operated by any *insured*; or
  - 6.18.5.2 where any *insured* has a direct or indirect financial interest, including but not limited to where any *insured* is a beneficiary of a trust.

#### **6.19 Retroactive date**

any *claim* directly or indirectly arising from or in connection with any conduct, act, error or omission which has taken place or is alleged to have taken place prior to the *retroactive date*.

## 6.20 Territorial limits

any *claim* brought outside of the *territorial limits* of this policy.

## 6.21 USA / Canada exposure

- 6.21.1 any *claim* directly or indirectly arising out of or in connection with conduct of the *insured* anywhere within the territorial limits of the United States of America or the Dominion of Canada, their territories or protectorates;
- 6.21.2 any legal proceedings which are brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada, their territories and protectorates;
- 6.21.3 the enforcement of any judgment, order or award in or in connection with any proceeding brought before any court or tribunal having actual or purported jurisdiction within the United States of America, the Dominion of Canada or their territories and protectorates;
- 6.21.4 any *claim* which is pursued by way of arbitration, mediation, conciliation, expert determination or any other form of alternative dispute resolution procedure taking place within or under the jurisdiction of the United States of America, the Dominion of Canada, their Territories and Protectorates, or for the recovery of any award or costs issued or incurred in connection with any such procedure.

## 6.22 War, Act of terrorism

any *claim* caused by or arising out of the following regardless of any other cause or event contributing concurrently or in any other sequence by:

- 6.22.1 any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 6.22.2 any *act of terrorism* or any action taken in controlling, preventing, suppressing or in any way relating to any *act of terrorism*.

## 6.23 Watercraft, Aircraft and Motor vehicles

any *claim* directly or indirectly arising from or in connection with the ownership, maintenance, operation, possession, use, loading or unloading by our on behalf of the *insured* of any watercraft, aircraft, motor vehicle or trailer.

# 7. Claims Conditions

The following Claims Conditions apply to your policy.

## 7.1 Advance payment of claim expenses

We will advance *claim expenses* incurred by an *insured* in the defence of a *claim*, as they are incurred and prior to the final adjudication of the *claim*, where:

- 7.1.1 indemnity under this policy is confirmed in writing by us; or
- 7.1.2 at our absolute discretion, without admitting indemnity, we agree to advance such *claim expenses*.

All such payments shall be repaid to us by the *insured* (or where more than one *insured* has received such payments, by such *insureds* severally and according to their respective interests) in the event and to the extent that the *insured* is not entitled to payment of such *claim expenses* under the terms and conditions of this policy.

## 7.2 Allocation

If both *loss* covered by this policy and *loss* not covered by this policy are incurred, either because a *claim* includes both covered and uncovered matters or because a *claim* is made against both *insured* and others who are not insured under this policy (including those persons or entities referred to in the *schedule* as the *insured*), the *insured* and Zurich shall use their best efforts to agree upon a fair and proper allocation between covered *loss* and uncovered *loss* having regard to the relative legal and financial exposures attributable to the covered and uncovered parties and/or matters. We are only liable under this policy for amounts attributable to covered matters and parties, and our liability for *loss*, including *claim expenses*, otherwise payable by us shall be reduced to reflect such fair and proper allocation.

If we and the *insured* agree on an allocation of *claim expenses*, we shall, subject to Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* in accordance with that Condition. If the parties cannot agree on such allocation, we shall, subject to Claims Condition 7.1 'Advance payment of claim expenses', advance *claim expenses* which we believe to be covered under the policy until a different allocation is negotiated, arbitrated, judicially or otherwise determined.

If requested by the *insured*, we shall submit any dispute on allocation to a Senior Counsel to be mutually agreed or, in default of agreement to be appointed by the President of the Bar Association, on the basis that the Senior Counsel shall determine the allocation according to his or her view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention referred to in this Claims Condition 7.2. The costs of Senior Counsel shall constitute *claim expenses* for the purposes of the policy and be part of and not in addition to the *limit of liability*.

Any such determined allocation of *claim expenses* on account of a *claim* shall be applied retroactively to all *claim expenses* on account of such *claim*, notwithstanding any prior advancement on a different basis. Any advancement of *claim expenses* shall be repaid to us by the *insured* severally according to their respective interests, if and to the extent that we determine that such amounts paid by us are not insured by this policy.

Any allocation or advancement of *claim expenses* in connection with a *claim* shall not pre-determine the allocation of other *loss* on account of such *claim*. In any arbitration, suit or other proceedings between us and the *insured* no presumption shall exist as to a fair and proper allocation, but will be governed by the intention set out in this clause.

## 7.3 Audit and Inspection

We may audit or inspect and have copies of any of the *insured's* books, records, information and operations at any time upon reasonable notice to the *insured* as far as such books, records, information and operations relate to any notification under this policy.

## 7.4 Defence and Settlement

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

The *insured* shall, at their own cost, upon our request give all such information, co-operation and assistance to us as we may reasonably require, to enable us to investigate and to defend a *claim* and to make any cross-claim for contribution, indemnity or damages and/or to enable us to determine our liability under this policy.

Where we do not elect to assume the conduct of the defence and/or settlement of a *claim*:

- 7.4.1 we shall retain the right to actively participate in the defence and settlement of the *claim* in respect of which indemnity is sought under this policy; and
- 7.4.2 the *insured* shall assert all appropriate defences and cross-claims for contribution, indemnity or damages and shall take all reasonable steps in defence of the *claim*.

## **7.5 Settlement disputes**

We shall not require the *insured* to contest any *claim* unless a Senior Counsel (to be mutually agreed upon between us and the *insured*) advises that such *claim* should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential *loss* and *claim expenses*) and the prospects of the *insured* successfully defending the *claim*. The cost of such Senior Counsel's opinion shall be deemed to be part of *claim expenses*.

In the event that we recommend settlement in respect of a *claim* and the *insured* does not agree that such *claim* should be settled, the *insured* may elect to contest such *claim* provided always that our liability shall not exceed the amount for which the *claim* could have been settled plus *claim expenses* incurred with our prior written consent up to the date of such election. The *insured* shall not unreasonably withhold consent to any settlement recommended by us.

## **7.6 Multiple Insured, Claims and Claimants**

All *claims* arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to constitute a single *claim* for the purposes of the *limit of liability* and the *deductible*.

## **7.7 Other insurance**

If a *claim* or *loss* or any other amounts covered under this policy are also potentially insured under any other valid policy(ies), prior or current, then this policy shall cover such *loss*, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such *loss* is in excess of the amount payable from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the *limit of liability* provided in this policy.

## **7.8 Payments in respect to Goods and Services Tax**

All *limits of liability* in this policy (except for the *deductible*) exclude GST where that GST is recoverable by us under the Goods and Services Tax Act 1985. We add GST, where applicable, to claim payments. However, this does not apply to the *deductible* which is GST inclusive.

## **7.9 Reporting and Notice**

The *insured* as a condition precedent to the right to be indemnified under this policy shall provide written notice to us during the *period of insurance* of any *claim* made against an *insured*.

Written notice shall include but not be limited to full particulars as to dates and persons involved, the date and manner in which the *insured* first became aware of the matters underlying the *claim*.

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

Zurich New Zealand Insurance Limited  
Attention: Financial Lines, Claims Manager

Once a circumstance is notified to us during the *period of insurance*, any subsequent *claim* or *loss* that arises from that circumstance is covered under this policy as though the *claim* or *loss* itself was notified during the *period of insurance*.

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

### 7.10 Subrogation

If we grant indemnity under this policy in respect of any *claim* or *loss* then we shall be subrogated to all the *insured's* rights of recovery in respect of such *claim* or *loss* regardless of whether or not any payment has been made or the *insured* has been compensated in full for their *loss*. The *insured* will give all such assistance in the exercise of rights of recovery as we may reasonably require.

The *insured* must refrain from doing anything that might prejudice our actual or potential rights of recovery against any party. Any amounts recovered by us, shall be allocated in the following order recovery costs, uninsured *loss*, *limit of liability* and *deductible*.

We agree not to exercise any such right of subrogation against any of the *insured's directors, officers or employees* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the *director, officer or employee*.

## 8. General Conditions

The following General Conditions apply to your policy.

### 8.1 Assignment

This policy and any rights under it shall not be assigned without our prior written consent.

### 8.2 Authorisation

The *policyholder* is authorised to act on behalf of all *insured* persons and entities.

### 8.3 Cancellation

8.3.1 The *policyholder* may cancel this policy at any time by giving notice in writing to us;

8.3.2 We may cancel this policy by notifying the *policyholder* in writing, if the *policyholder* is in breach of the terms or conditions, or for any other reason available at law. Notice of cancellation has the effect of cancelling this policy at 4.00pm on the 30th business day, after the day on which notice was sent to the *insured*;

8.3.3 Upon cancellation by the *policyholder* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*;

8.3.4 Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *period of insurance*.

However, in the event of the notification of a *claim* which is covered under the policy, or a notification pursuant to the Insurance Contracts Act 1984 (Cth) being given by the *insured* prior to cancellation, the premium shall be regarded as fully earned and may be retained by us.

### 8.4 Change of risk

Every change materially affecting the facts, circumstances, degree or amount of risk existing at the commencement of this insurance or at any subsequent renewal date shall be notified in writing to us as soon as such change comes to the notice of the *insured* or any of their officers or representatives. On receipt of such notice we may vary the terms of this policy and/or charge such additional premium as we may determine appropriate.

### 8.5 Changes to the policy

The terms and conditions of this policy may only be altered by a written endorsement issued by us.

## **8.6 Deductible**

Our obligation to pay *loss* (including *compensation* and *claim expenses*) in connection with any *claim*, or other amount under this policy, shall only be in excess of the *deductible* as stated in the *schedule* or as otherwise stated in this policy.

If the *deductible* is expressed as exclusive the *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss*, however shall not include *inquiry costs* and *claim expenses*. The *deductible* will be the first amount borne by the *insured* and shall remain uninsured.

If the *deductible* is expressed as inclusive the *deductible* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss*, *inquiry costs* and *claim expenses*. The *deductible* will be the first amount borne by the *insured* and shall remain uninsured.

## **8.7 Late arising extensions**

If during the *period of insurance* we develop a new standard wording providing enhancements of coverage to our base Architects and Engineers Professional Indemnity Insurance policy in the country where the *policyholder* is domiciled and such wording is to be made available to our clients in such country for no additional premium, then the *insured* shall have the right to request the benefit of such new coverage enhancement, subject to all underwriting information or particulars as we may require, from the date of such availability.

## **8.8 Notice**

Every notice or communication to us shall be in writing and sent to our office where the policy was issued.

## **8.9 Plurals and Titles**

The *submission*, this policy, the *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 8.9.1 headings are descriptive only, not an aid to interpretation;
- 8.9.2 singular includes the plural, and vice versa;
- 8.9.3 the male includes the female and neuter; and
- 8.9.4 references to positions, offices or titles shall include their equivalents in any jurisdiction in which a *claim* is made.

## **8.10 Proper law and Jurisdiction**

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with New Zealand law.

In the event of any dispute arising under this policy including, but not limited, to its construction and/or validity and/or performance and/or interpretation, the *insured* will submit to the exclusive jurisdiction of any competent Court in New Zealand.

## **8.11 Severability and Non-imputation**

Where this policy insures more than one party, the application for insurance is construed as a separate application by each *insured*. When determining whether coverage is available under this policy:

- 8.11.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- 8.11.2 for the purposes of the exclusions (other than Exclusion 6.14 'Prior or Pending'), no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

### **8.12 Valuation and Foreign currency**

All premiums, *limits of liability*, retentions, indemnity and other amounts referred to in this policy are expressed and payable, where due, in New Zealand currency. Unless where otherwise provided, if judgment is rendered, settlement is denominated or an element of *loss* under this policy is stated in a currency other than New Zealand dollars, payment under this policy shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars in accordance with the Reserve Bank of New Zealand on the date the final judgment is reached, the amount of the settlement is agreed upon or the element of *loss* is due, as the case may be.

### **8.13 Waiver of privilege**

If we instruct any lawyer to investigate or defend any *claim* against any *insured*, the *insured* authorise the lawyer to provide us any documents, information or advice in respect of the *loss*, including in relation to indemnity, and the *insured* waives any privilege to the extent necessary to give full effect to our entitlement in this respect.



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