

## Professional Indemnity Insurance

### [Design and Construct – 06/08]

Nova Underwriting Pty Ltd

ABN 42 127 786 823 / AFSL 324767

#### 1.0 INSURING CLAUSES

- 1.1** We will cover **You** for any **Claim**, first made against **You** and reported to **Us** during the **Insurance Period**, for breach of professional duty by **You** in the conduct of the **Business** by **You**.
- 1.2** We will also cover **You** for the costs and expenses incurred in the defence, settlement or investigation of that **Claim**.

#### 2.0 AUTOMATIC PROVISIONS

These provisions are included automatically and each is subject to the terms of the policy except where varied by the provision. Their inclusion does not increase the **Sum Insured**. The acts or omissions recorded in Automatic Provisions 2.2, 2.3, 2.4, 2.6, 2.7, 2.10 and 2.11 must occur in the exercise of **Your** professional duty in the conduct of the **Business**.

##### **JOINT VENTURE**

- 2.1** “**Business**” includes any joint venture to which **You** are a party, but cover will be limited to a sum equivalent to **Your** proportion of liability as defined by the joint venture arrangement.

##### **LIBEL and SLANDER**

- 2.2** “breach of professional duty” includes making a libellous or slanderous statement.

##### **TRADE PRACTICES ACT**

- 2.3** “breach of professional duty” includes a breach of any provision of any Australian or New Zealand trade practices or fair trading legislation.

## **DISHONESTY**

- 2.4 “breach of professional duty” includes dishonest, fraudulent, criminal or malicious acts or omissions, but not if such acts or omissions cause loss of money, negotiable instruments, bearer bonds or coupons, bank or currency notes.

## **OUTGOING PRINCIPALS/OTHERS**

- 2.5 “**You**” includes people who are no longer principals, partners, directors or employees of any party named in the Schedule against “NAME”.

## **LOSS OF DOCUMENTS**

- 2.6 “breach of professional duty” includes **Your** obligation to pay for the cost of replacing or restoring **Documents** owned by others which have been lost, damaged or destroyed by **You**.

## **BREACH OF FIDUCIARY DUTY**

- 2.7 “breach of professional duty” includes a breach of fiduciary duty owed to **Your** clients or customers.

## **ESTATES, SPOUSES and LEGAL REPRESENTATIVES**

- 2.8 Should **You** die or become incapable of managing **Your** affairs, “**You**” includes **Your** estate, spouse, heirs, legal personal representatives or assigns. **We** will only do this if such persons observe, and are subject to, the terms of this policy.

## **PRIOR ENTITY**

- 2.9 Definition 6.14 “**You**” includes corporate entities, other than entities contemplated by Optional Provision 3.3, through which the entity named in the Schedule previously traded.

## **CONSULTANTS, SUB-CONTRACTORS AND AGENTS**

- 2.10 “breach of professional duty” includes breaches of professional duty in the conduct of the **Business** by **Your** consultants, sub-contractors and agents, providing **You** use reasonable endeavours to ensure that such parties maintain adequate professional indemnity insurance and **You** preserve **Your** legal rights against them. No cover is provided for **Claims** made against such consultants, sub-contractors and agents.

## INTELLECTUAL PROPERTY

- 2.11 “breach of professional duty” includes unintentional infringement of intellectual property rights, including copyright, patent, trademark, plagiarism, registered design and breach of confidentiality.

## INQUIRIES

- 2.12 We will pay on **Your** behalf, all legal costs reasonably incurred in connection with **Your** attendance at any **Inquiry** at which **You** are required by law to appear. We will only do this if:

- the **Inquiry** is ordered or commissioned during the **Insurance Period**; and
- **Our** consent is obtained before such costs are incurred; and
- **You** notify **Us** before the **Insurance Period** that **You** are required to attend the **Inquiry**; and
- the **Inquiry** is not being held in the **USA** or **Canada**; and
- **Your** attendance is required because of **Your** involvement in the **Business**; and
- at **Our** option, **We** can nominate legal advisers to be used; and
- **Our** liability does not exceed \$100,000 for the **Insurance Period**.

## SEVERABILITY AND NON-IMPUTATION

- 2.13 If any person fails to:

- comply with their duty of disclosure, or
- makes a misrepresentation to **Us**, or
- fails to comply with a condition of this policy, then

We will not deny cover to any other person on these grounds if that other person was unaware of the matter not disclosed, the truth of the matter misrepresented, or did not breach the condition, as the case may be.

## 3.0 OPTIONAL PROVISIONS

The following provisions are optional and are not included unless recorded in the Schedule. Each provision is subject to the terms of this policy, except where varied by the provision. Except for Optional Provision 3.1, their inclusion does not increase the **Sum Insured**.

### ONE AUTOMATIC REINSTATEMENT

- 3.1 While **Our** liability for any one **Claim** remains unchanged, **We** agree to reinstate the **Sum Insured** if it is either partially or totally exhausted by any payment[s]

made by **Us** so that **You** will be covered for the **Sum Insured** for subsequent unrelated **Claims**, but the aggregate of all such reinstatements shall not exceed an amount equal to the **Sum Insured**.

## LOSS MITIGATION

**3.2** We agree that a **Claim** includes any event that first occurs and is reported to **Us** during the **Insurance Period** and which **We** consider would otherwise result in a **Claim** [as defined in clause 6.2 of this policy unchanged by this endorsement] if not rectified, PROVIDED THAT prior to any rectification occurring or liability to rectify being admitted:

- independent and appropriately qualified experts agreed by **Us**, opine that a breach of professional duty by **You** in the conduct of the **Business** by **You** has occurred; and
- **We** agree in writing that a breach of professional duty by **You** has occurred, and that the policy covers that breach of professional duty; and
- the costs of such experts will be borne by **You** up to the limit of the **Excess**.

## PREVIOUS BUSINESS

**3.3** “**Business**” includes any similar business of which **You** were a principal, partner or director before joining the **Business** conducted by the party[ies] named in the Schedule against “**NAME**”. **We** will only do this if you are not entitled to cover under any insurance held by that similar business. **We** will not apply Exclusion 4.2.8 to **Claims** under this provision.

## 4.0 EXCLUSIONS

### KNOWN CLAIMS/CIRCUMSTANCES

**4.1** We will not cover **You** for any **Claim**:

- first made, threatened or intimated against or to **You** prior to the **Insurance Period**; or
- arising from any matter disclosed or notified to **Us** or any other insurer prior to the **Insurance Period** as being either a **Claim**, or circumstances which might result in a **Claim**; or
- arising from any litigation or **Inquiry** that was in progress or pending prior to the **Insurance Period**; or

- arising from circumstances of which **You** were aware prior to the **Insurance Period** and which **You**, or a person in **Your** position, ought reasonably to have realised to be circumstances which might result in a **Claim**.

For the purposes only of Exclusion 4.1, **Claim** includes, but is not limited to:

- a **Claim** as defined at clause 6.2; or
- a demand for compensation or damages; or
- an assertion of a right or entitlement to compensation, damages or other legal relief; or
- an assertion, allegation or complaint of a breach of professional duty;
- an assertion, allegation or complaint of any act or omission causing or potentially causing loss or damage; or
- an intention to seek compensation, damages or other legal relief.

**4.2 We will not cover You for any Claim:**

**DOCUMENTS**

- 4.2.1** which arises from the loss or destruction of, or damage to, any **Document**, unless covered by Automatic Provision 2.6; or

**DISHONESTY**

- 4.2.2** which arises from any dishonest, fraudulent, criminal or malicious act or omission, unless covered by Automatic Provision 2.4; nor will we cover any person who commits or condones any such act or omission; or

**CONTRACTUAL OBLIGATIONS**

- 4.2.3** which arises from any obligation assumed by **You** by way of warranty, guarantee, contract or indemnity unless such obligation would have existed independently of such assumption; or

**USA/CANADA – JURISDICTION / TERRITORY**

- 4.2.4** brought in a court in **USA** or **Canada**, or any court exercising jurisdiction under any law of **USA** or **Canada**, or in any other court to enforce a judgement or order of those courts; or

- 4.2.5** which arises from an act, error or omission occurring in **USA** or **Canada**; or

## **NUCLEAR**

- 4.2.6** which arises from nuclear weapons materials, or radiation or contamination from any nuclear fuel or waste; or

## **PREVIOUS BUSINESS**

- 4.2.7** which arises from any business of which **You** were a principal, partner or director before joining the **Business** conducted by the party[ies] named in the Schedule against “NAME”, unless covered by Optional Provision 3.3; or

## **PRIOR ACTS**

- 4.2.8** which arises from an act, error or omission occurring prior to the **Retroactive Date**; or

## **ASBESTOS**

- 4.2.9** which arises from asbestos; or

## **RELATED PARTIES / EPL**

- 4.2.10** brought by, or arising from a breach of professional duty to, a **Related Party**; or

## **TRADING / OTHER DEBT**

- 4.2.11** in connection with any personal or trading debt, or any guarantee given for any debt; or

## **DIRECTORS and OFFICERS**

- 4.2.12** which arises from **You** acting as a trustee, director, secretary or officer of a trust or body corporate; or

## **OWNER/OCCUPIER'S LIABILITY**

- 4.2.13** which arises from **Your** ownership or occupation of land or buildings; or

## **EMPLOYER'S LIABILITY**

- 4.2.14** which arises from **Your** liability as an employer, including **Claims** arising from physical injury, death, sickness, disease, mental illness or emotional distress of any employee of **Yours**, or damage to their property; or

## **FEE RECOVERY**

**4.2.15** to refund, or for damages calculated by reference to, any fee or charge rendered or incurred by **You**; or

## **VEHICLES/AIRCRAFT/MARINE CRAFT**

**4.2.16** which arises from **Your** liability as an owner or operator of any aircraft, marine craft or motor vehicle.

## **INSURANCE/INSOLVENCY**

**4.2.17** which arises from a failure to effect or maintain insurance, or from **Your** liquidation or insolvency.

## **FINES/PENALTIES**

**4.3** **We** will not cover **You** for **Your** liability to pay fines, penalties or exemplary damages.

## **4.4 WAR and TERRORISM**

**We** will not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with:

- war, invasion, acts of foreign enemies, hostilities or warlike operations [whether war be declared or not], civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- any act of terrorism. “Terrorism” includes an act involving the use or threat of force or violence 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] which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any Government and/or to put the public or any section of the public in fear;

and regardless of any other cause or event contributing to such **Claim**, loss, liability, cost or expense.

**We** will also not cover **You** for any **Claim**, loss, liability, cost or expense directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing or suppressing or in any way relating to any of the above acts or events.

The burden of proving that this exclusion does not apply shall be upon **You**.

## **RECOVERY RIGHTS**

- 4.5** **Our** liability under this policy is reduced to the extent by which **Our** subrogation rights against any other party have been impaired because of an agreement between **You** and that other party.

## **5.0 CONDITIONS**

### **REPORTING CLAIMS**

- 5.1** As soon as **You** can, and within the **Insurance Period**, **You** must give **Us** written notice of any **Claim**, and give **Us** such information and assistance as **We** consider necessary in connection with the **Claim**, including identification of any parties against whom **You** may have rights.

### **MANAGEMENT OF CLAIMS**

- 5.2** **You** must not admit liability for or settle any **Claim**, or incur any costs or expenses in connection with any **Claim**, without **Our** written consent.

**We** may assume conduct of the defence and settlement of any **Claim** and may appoint legal advisers for that purpose, but we will not force **You** to contest any **Claim** unless Counsel [agreed to by **You** and **Us**] advises that the **Claim** should be contested having regard to the economics and prospects of the defence of the **Claim**.

Legal advisers retained by **Us** to act on **Your** behalf are free to disclose to **Us** any information obtained while acting for **You** and **You** agree to waive any legal professional or client privilege to the extent that such privilege may have prevented such disclosure to **Us**.

**We** may allow **You** to conduct the defence of the **Claim** if **We** believe the **Claim** will not exceed the **Excess**. If **We** do this, **You** will be required to provide **Us** with regular progress reports and **We** reserve the right to take over conduct of the defence of the **Claim** at any time.

We may settle the **Claim** if We so choose upon such terms as We have been properly advised and, in doing so, may take into account the economics of the defence of the **Claim**.

### **LIMITED LIABILITY**

- 5.3** Our liability under this policy will not exceed in the aggregate, in respect of any one **Claim**, and for all **Claims**, and for costs and expenses payable under Insuring Clause 1.2, the **Sum Insured**.

### **MULTIPLE CLAIMS**

- 5.4** For the purposes of determining the **Sum Insured** and the **Excess**, all **Claims** which arise from acts, errors, or omissions which are the same or related to each other will be regarded as one **Claim**.

### **EXCESS**

- 5.5** You must bear the amount of the **Excess** in respect of each **Claim** (or any claim We deem to be a **Claim**) covered by this policy. Where the **Excess** is described in the Schedule as “Costs Inclusive”, all external expenses incurred by Us in connection with the **Claim** will be borne by You up to the limit of the **Excess**.

### **CANCELLATION**

- 5.6** You may cancel this policy at any time by notifying Us in writing. We may also cancel this policy, but We can only do so in accordance with the law. In the event of cancellation, any refund of premium, and the amount of that refund, is at Our sole discretion.

### **SUBROGATION**

- 5.7** Where We have paid a **Claim** under this policy, We become entitled to any rights You may have against any party in relation to that **Claim** [subject to law]. You must assist Us [including giving evidence at any civil trial] and provide such information [including signed statements] as We reasonably require to exercise such rights.

### **HEADINGS**

- 5.8** Paragraph titles used 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.

## **GOVERNING LAW**

- 5.9** This policy will be construed in accordance with the laws of Australia and the state or territory where the policy was issued. All disputes relating to interpretation of this policy will be determined by the courts [or a federal court] based in that state or territory.

## **CONSIDERATION**

- 5.10** The cover provided by **Us** under this policy is in consideration of the payment of the agreed premium.

## **VALIDITY**

- 5.11** To be valid, this policy must have a Schedule attached to it which has been signed by an authorised officer of **Ours**.

## **SERVICE OF SUIT**

- 5.12** Any summons or process to be served upon the **Security** may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21 , Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

who has authority to accept service and to enter an appearance on behalf of the **Security**, and who is directed at **Your** request to give a written undertaking to **You** that they will enter an appearance on behalf of the **Security**.

## **GENERAL INSURANCE CODE of PRACTICE**

- 5.13** Other than for **Claims** managed outside Australia, this policy complies with the Insurance Council of Australia's General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry and is proudly supported by the **Security**. Any enquiry or complaint relating to this policy should be referred to **Us**, but if **You** are not satisfied with the way **We** dealt with the complaint, **You** should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21, Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

who will refer the matter to Lloyd's Policyholder & Market Assistance Department. If they are unable to resolve the complaint, it may be referred to the Financial Ombudsman Service [UK], but further details will be provided at the appropriate juncture.

## 6.0 DEFINITIONS

**6.1 Business** means: The performance of any of these services:

- design or specification
- feasibility study
- technical information calculation
- advice of a technical nature
- surveying, including quantity surveying
- quality and/or loss control
- measurement, testing and/or certification of materials
- testing and/or commissioning
- inspections
- project construction management for a specified fee
- training in relation to any of the above

But only when these services are performed by or under the direct supervision of a properly qualified architect, engineer, surveyor or a person of skilful character according to an established discipline.

**Business** does not mean supervision, inspection or certification undertaken in **Your** capacity as a building or engineering contractor.

**6.2 Claim** means: any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter-claim or third or similar party notice served upon **You**.

**6.3 Documents** means: deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer records and electronically

- stored data. **Documents** does not mean: money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 6.4 Excess** means: the amount[s] shown in the Schedule against “EXCESS”.
- 6.5 Inquiry** means: any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate **Your** affairs, or the affairs of the **Business**.
- 6.6 Insurance Period** means: the period shown in the Schedule against “INSURANCE PERIOD”, unless terminated earlier.
- 6.7 Our(s)** means: pertaining to Nova Underwriting Pty Ltd on behalf of the **Security**.
- 6.8 Related Party** means: a party insured by this policy; or a party related to **You**, including entities which are part of the same group of entities as **You**; or any person who unsuccessfully sought employment with **You**, but only in relation to **Your** failure to employ them.
- 6.9 Retroactive Date** means: the date shown in the Schedule against “RETROACTIVE DATE”. If no date is shown, and the word “Unlimited” appears, then Exclusion 4.2.8 will not apply.
- 6.10 Security** means: certain Underwriters at Lloyd’s, each of whom [including their executors and administrators] is only liable for their share of any **Claim**, loss, liability or expense payable by this policy. Details of each Syndicate and its share can be obtained from Nova Underwriting Pty Ltd.
- 6.11 Sum Insured** means: the amount shown in the Schedule against “SUM INSURED”.
- 6.12 Us and We** means: Nova Underwriting Pty Ltd on behalf the **Security**.
- 6.13 USA or Canada** means: the United States of America or the Dominion of Canada, and any dependency, protectorate, colony, state or territory of either country.
- 6.14 You** means:
- any party named in the Schedule against “NAME”; and
  - any person who is during the **Insurance Period** a principal, partner, director or employee of the above but only when acting on behalf of the **Business**.
- 6.15 Your(s)** means: pertaining to **You**.