



Civil Liability Professional Indemnity Wording

Solution Underwriting Agency Pty Ltd

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Important Information

This Policy is a legal contract between you and us. You have paid, or agreed to pay, us the Premium and we provide the cover specified in this Policy and as set out in your Schedule.

The terms, conditions and provisions of the insurance we offer you are set out in this Policy. It is important that you:

- read all of the Policy before you buy it to make sure that it gives you the protection you need;
- are aware of the limits on the cover provided and the amounts we will pay you (including any Excess that applies);
- are aware of the definitions in your Policy. You will find definitions throughout your Policy.

You must comply with all provisions of this Policy, otherwise we may be entitled to refuse to pay a claim or reduce the amount you are entitled to receive.

The Policy is in force for the Period of Insurance set out in your Schedule or until cancelled.

For the limits on the cover provided:

- some of these will be stated in the Policy itself (these are our standard policy limits); and
- the remainder will be stated in your Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If your Policy is endorsed you will receive notification of the endorsement.

In issuing this Policy to you, we have relied upon the proposal form you have already completed.

Your Duty of Disclosure

This Policy is subject to the Insurance Contracts Act 1984. Under that Act you have a Duty of Disclosure.

Before you take out insurance with us, you have a duty to tell us of everything that you know, or could reasonably be expected to know, that is relevant to our decision to insure you and to the terms of that insurance. If you are not sure whether something is relevant you should inform us anyway.

You have the same duty to inform us of those matters

before you renew, extend, vary, or reinstate your contract of insurance.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- we know or, in the ordinary course of our business, ought to know; or
- we have indicated we do not want to know.

If you do not comply with your duty of disclosure, we may be entitled to:

- reduce our liability for any claim.
- cancel the contract.
- refuse to pay the claim.
- avoid the contract from its beginning, if your non-disclosure was fraudulent.

Taxation Information

The amount of cover available under this Policy excludes Goods and Services Tax (GST)

If you are not registered for GST, in the event of a claim we will reimburse you the GST component in addition to the amount that we pay.

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.

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 are attributable to your failure to notify us of your entitlement (or correct entitlement) to an input tax credit on the Premium.

If you are liable to pay an Excess 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 Excess.

Important Information (cont'd)

If you are unsure about the taxation implications of this Policy, you should seek advice from your accountant or tax professional.

Privacy

Calliden respects your privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how Calliden treats your privacy, and it is recommended that you read the policy in conjunction with this notice.

Calliden collects personal information to assess your request for insurance, to administer your policy, provide other insurance services as requested by you, and also to notify you about other Calliden services or promotions from time to time. At the time of collecting your information we will inform you of the purpose for the collection and the consequences if you choose not to provide the information.

In order to provide its insurance services Calliden may need to share your information with third parties including your agent or broker and Calliden's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with Calliden's privacy policy you may obtain access at any time to information that Calliden or its service providers hold on you. If you would like to contact Calliden about privacy, or would like to obtain a copy of the privacy policy you may do so through one of the following means:

- obtain the privacy policy online at www.calliden.com.au
- by phone 02 9551 1111
- by email to privacy@calliden.com.au
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565

Dispute Resolution Process

How you can resolve a complaint you have with us

If you would like to make a complaint, we will do everything we can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how you can lodge your complaint and how Calliden will try to resolve it.

You may contact us at any time if you are dissatisfied with any matter relating to your insurance with Calliden, including:

- our decision on your claim;
- our handling of your claim;
- the service of our representatives, assessors, loss adjusters or investigators; and
- your insurance policy.

Contact us

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance policy, please contact us on 02 9551 1155 and we will try to resolve your complaint straight away.
- You can write to us at:
PO Box 348, Milsons Point, NSW 1565

How we resolve complaints

- We will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, which contains a guide to our process, are available upon request.
- We will handle all complaints without cost to you.
- A complaints consultant will be assigned to the management of your complaint and will acknowledge your complaint within two business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve your complaint within a further 13 business days. In certain circumstances a longer period may be required, and we will request a later response date.
- The outcome of the complaint will be advised to you in writing, stating our reasons and any corrective action that will be undertaken.

Important Information (cont'd)

If your complaint is still unresolved

If we cannot resolve your complaint within 15 business days or you are not happy with our response to your complaint, you can seek an external review via our external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insured's and their insurance companies.

For more information call 1300 78 08 08 or visit www.fos.org.au

If the FOS is unable to address your complaint then Calliden may be able to provide you with details of an alternative external dispute resolution service.

General Insurance Code of Practice

Calliden is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers.

Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or look at www.codeofpractice.com.au

Non-renewable policy

This Policy will terminate at the end of the Period of Insurance specified in your Schedule.

If you want to obtain similar insurance for a subsequent Period of Insurance, you will need to complete a new proposal form before the end of the Period of Insurance specified in your Schedule.

Waiver, Surrender of Rights, Contribution or Indemnity

We will not compensate you for any loss or damage that is covered by this Policy where;

- another person or party would be liable to compensate you, or hold you harmless, for part of or all of that loss or damage; and
- you have agreed with that person or party, either before or after the inception of this Policy, that you will not seek recovery from them.

Definitions

The intended meaning of some of the important words used in this **Policy** are shown below:

Act of 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;
- ii. involves damage to property;
- iii. endangers life other than that of the person committing the action;
- 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.

Business

The professional business conducted by the **Insured** and described in the **Schedule** against 'Business'.

Claim

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

Conflict

- a. a conflict of interest and duty, where an **Insured** acts for a client interest whilst being subjected to a contrary interest, being an interest of another client; or
- b. a conflict of interest and duty, where an **Insured** acts for a client whilst being subjected to a contrary interest, being a personal advantage interest.

Defence Costs

Reasonable legal costs and other expenses incurred by or on behalf of the **Insured** (with the written consent of the **Insurer**) or by the **Insurer** in the investigation, defence and/or settlement of a **Claim**.

Documents

Deeds, wills, agreements, maps, plans, books, letters, certificates, forms, and documents of any nature, whether written, printed or reproduced by any method. Documents does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

Employee

Any person employed under a contract of service by the **Insured** but does not include a director, principal, partner, consultant, contractor, subcontractor or agent of the **Insured**.

Excess

The amount(s) shown in the **Schedule** against 'Excess', which is inclusive of **Defence Costs**.

Inquiring Body

A court, tribunal, or legally constituted industry or professional board.

Inquiry Costs

Necessary and reasonable legal costs and expenses incurred by the **Insured** arising out of any notice requiring the **Insured's** attendance at an inquiry or hearing before an **Inquiring Body**.

Insolvent

Becoming a body corporate, entity or person:

- a. that is bankrupt or unable to pay its debts as and when they fall due; or
- b. in respect of which an application for bankruptcy or winding up has been made; or
- c. in respect of which a Liquidator, Provisional Liquidator, Receiver, Receiver and Manager, or Official Manager has been appointed (whether or not by a Court); or

Definitions (cont'd)

- d. in respect of which an administrator has been appointed or that is under administration; or
- e. that has executed a Deed of Company Arrangement that has not yet terminated; or
- f. that has entered into a compromise or arrangement with another person.

Insured

- a. any party named in the **Schedule** as an **Insured**, and
- b. any person who is a director, principal, partner, or **Employee** during the **Period of Insurance** when acting on behalf of the **Business**, and
- c. any person who ceased to be a director, principal, partner, or **Employee** of the **Insured** prior to the **Period of Insurance** whilst they were acting on behalf of the **Business**.

Insurer

Calliden Insurance Limited (Calliden)
(ABN 47 004 125 268, AFSL No. 234438).

Joint Venture

An enterprise, which the **Insured** carries on together with some other party.

Limit of Indemnity

The amount shown in the **Schedule** against 'Limit of Indemnity' as the total liability of the **Insurer** under the **Policy** for all **Claims** in the **Period of Insurance**.

Period of Insurance

The period shown in the **Schedule** against 'Period of Insurance' unless terminated earlier.

Policy

This **Policy** document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by the **Insurer** after inception of the **Policy**, and the information given to the **Insurer** on behalf of the **Insured** in the **Proposal**.

Pollutant

Any:

- a. solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b. waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c. other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

Proposal

The written proposal form together with all supplementary information and material provided by or on behalf of the **Insured**.

Retroactive Date

The date shown in the **Schedule** against 'Retroactive Date'.

Schedule

The schedule attaching to and forming part of this **Policy**.

Senior Counsel

A barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia or the Dominion of New Zealand.

1. Preamble

Subject to payment of the premium set out in the **Schedule**, the **Insurer** agrees with the **Insured** to provide insurance on the terms of the **Policy**.

This **Policy** is written on a 'claims made and notified' basis. Subject to the Continuous Cover clause, it will only respond to **Claims** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**.

Where the **Insured** gives notice in writing to the **Insurer** of any facts that might give rise to a **Claim** against the **Insured** as soon as they become aware of those facts but before the expiry of the **Period of Insurance**, the **Insured** may have rights under section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against the **Insured** 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.

Some of the words in this **Policy** have specific meanings, which are set out in the Definitions Section.

In granting insurance to the **Insured**, the **Insurer** has relied upon the **Proposal**, which will be considered incorporated herein and be the basis of this **Policy**.

2. Insuring Clauses

2.1 Cover

The **Insurer** will indemnify the **Insured** for civil liability arising from any Claim, which is:

- a. first made against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**; and
- b. for breach of professional duty in the conduct of the **Business**; and
- c. by reason of any act, error or omission occurring on or after the commencement of the **Period of Insurance** or such earlier **Retroactive Date**.

The **Insured** must comply with the General and Claims Conditions. The **Insurer** will not cover anything excluded by the General or Specific Exclusions. The total liability of the **Insurer** under this Section of the **Policy** in respect of civil liability for any one **Claim** and in the aggregate for all **Claims** (including any amounts paid or which have been agreed will be paid in accordance with **Claims Condition 5.4**) shall not exceed the **Limit of Indemnity**.

2.2 Defence Costs

The **Insurer** will pay **Defence Costs** incurred with the written consent of the **Insurer** in the investigation, defence and/or settlement of any **Claim** for which the **Defence Costs** are part of and can be included in the **Limit of Indemnity**, however the **Insurer** will indemnify the **Insured** for **Defence Costs** in addition to the **Limit of Indemnity** for up to:

- i. \$5,000,000; or
- ii. the **Limit of Indemnity**;

whichever is the lesser.

Provided that if a judgment or an amount required to settle a **Claim** exceeds the **Limit of Indemnity**, our liability to pay **Defence Costs** is limited to the proportion the **Limit of Indemnity** bears to the amount required to be paid to dispose of the **Claim** and in all cases will not exceed the amount of additional **Defence Costs** described above.

2.3 Clarification of Insuring Clause

The term “breach of professional duty” in 2.1 above includes:

- a. conduct in the **Business** which is in breach of the Trade Practices Act 1974 (Commonwealth) or corresponding provisions in Commonwealth of Australia and Australian State or Territory fair trading legislation, but not for criminal liability.
- b. unintentional libel, unintentional slander or unintentional defamation by the **Insured** in the conduct of the **Business**.

3. Automatic Extensions

The **Insurer** agrees to provide cover under these Extensions, for no additional premium, provided that:

- a. the indemnity provided is subject to the **Schedule**, Exclusions, Conditions, **Excess** and all other terms of this **Policy**;
- b. the inclusion of any **Policy** Extension shall not increase the **Limit of Indemnity**.

3.1 Dishonesty

The **Insurer** agrees that, subject to this clause and the remaining terms of the **Policy**, Exclusion 4.4 will not apply to any **Claim** arising from or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission of any **Employee** in the conduct of the **Business**.

Provided that no indemnity is available by virtue of this clause:

- a. where the **Insured** has knowingly engaged in or condoned such conduct,
- b. for any person committing or condoning the act, error or omission,
- c. for any loss sustained or liability incurred as a result of any act, error or omission occurring after the date on which the **Insured** first discovers, or has reasonable cause for suspicion of, dishonest, fraudulent, criminal or malicious conduct on the part of any such person.

3.2 Joint Venture

The **Insurer** agrees to provide cover, subject to the terms of this **Policy**, for any legal liability of the **Insured** which is based on or attributable to the **Insured's** provision of professional services as part of a **Joint Venture**, where:

- a. the fees or income derived from participation in such **Joint Venture** have been included in the **Proposal** for the purposes of calculating the premium for this **Policy**; and
- b. the **Joint Venture** is not otherwise insured by any other more specific insurance in respect of the **Joint Venture**; and

- c. the liability of the **Insured** is not otherwise excluded by the terms of this **Policy**.

There is no cover under this **Policy** for the **Insured's** **Joint Venture** partner(s).

3.3 Severability

The **Insurer** agrees that any conduct on the part of any party who is an **Insured**, whereby such party breached the duty of disclosure or made a misrepresentation to the **Insurer** before this contract was entered into, will not prejudice the right of any other party who is an **Insured** to indemnity under the **Policy**. Provided that such other **Insured**:

- a. is innocent of and has no prior knowledge of any such conduct; and
- b. will immediately upon becoming aware of any such conduct advise the **Insurer** in writing of all known facts in relation to such conduct.

Nothing in this Extension relieves any **Insured** from the duty of disclosure owed to the **Insurer**.

3.4 Loss of Documents

If during the **Period of Insurance** the **Insured** first discovers that any **Documents** the property of or entrusted to the **Insured** have been destroyed, damaged, lost or mislaid the **Insurer** agrees to provide cover for:

- a. any legal liability of the **Insured** which is based on or attributable to such **Documents** having been destroyed, damaged, lost or mislaid; and
- b. costs and expenses of whatsoever nature incurred by the **Insured** in replacing or restoring such **Documents**.

Provided always that:

- i. such costs and expenses are supported by accounts approved by a competent person nominated by the **Insurer**.
- ii. no liability will attach for any loss brought about by wear, tear, vermin, mould or mildew or any other gradually operating cause.

3. Automatic Extensions (cont'd)

- iii. the maximum aggregate amount payable by the **Insurer** under this extension in any **Period of Insurance** is \$500,000 inclusive of **Defence Costs** which is part of and not in addition to the **Limit of Indemnity**.

3.5 Consultants Sub Contractors and Agents

The **Insurer** agrees to provide cover, subject to the terms of this **Policy** for any legal liability arising from, attributable to or in any way connected with the provision of professional services by any consultants, sub contractors or agents of the **Insured**.

No indemnity is provided for any **Claim** made against such consultants, sub contractors or agents.

3.6 Intellectual Property

The **Insurer** agrees to provide cover, subject to the terms of the policy, for infringement of rights of intellectual property, provided that the act, error or omission by the **Insured** is unintentional and is committed in the course of carrying on the **Business**.

3.7 Inquiry Costs

The **Insurer** may, if it considers it reasonable to do so, indemnify the **Insured** for **Inquiry Costs**.

Provided that:

- a. the notice requiring the **Insured's** attendance at the inquiry or hearing is first received by the **Insured** and notified to the **Insurer** during the **Period of Insurance**; and
- b. such attendance arises directly from conduct allegedly committed by the **Insured** in carrying on their **Business**; and
- c. such indemnity is subject to the written consent of the **Insurer** prior to the incurring of the **Inquiry Costs**; and
- d. regular or overtime wages, salaries or fees of the **Insured** are excluded from this indemnity; and
- e. the total liability of the **Insurer** under this clause shall not exceed \$20,000 during the **Period of Insurance**.

3.8 Estates

The **Insurer** agrees to provide cover, subject to the terms of the **Policy** for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent **Insured**.

3.9 Former Principals

The **Insurer** agrees to indemnify former principals, partners, directors and **Employee(s)** of the **Insured** in respect of civil liability insured by Insuring Clauses 2.1, 2.2 and 2.3 provided always that the definition of the **Insured** includes those persons and only in respect of work performed while a principal, partner, director or **Employee** of the **Insured**.

3.10 Automatic Reinstatement

In the event of exhaustion or partial exhaustion of the **Limit of Indemnity** set out in the **Schedule** by reason of notification of **Claims** during the **Period of Insurance** the **Insurer** agrees to reinstate the **Limit of Indemnity** from the time of such notification until the expiry of the same **Period of Insurance**.

Provided that:

- a. the **Limit of Indemnity** having been so reinstated, the reinstatement shall not apply in respect of **Claims** made prior to the effective date of the said reinstatement, and
- b. the aggregate of the amounts so reinstated shall be limited in the **Period of Insurance** to an amount equal to the **Limit of Indemnity** applicable at the inception of the **Period of Insurance**, and
- c. the **Limit of Indemnity** so reinstated shall represent the total liability of the **Insurer** for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**.

3. Automatic Extensions (cont'd)

3.11 Continuous Cover

Where the **Insured**:

- a. first became aware of facts or circumstances that might give rise to a **Claim**, prior to the **Period of Insurance**; and
- b. had not notified the **Insurer** of such facts or circumstances prior to the **Period of Insurance**, then exclusions 4.1 and 4.2 will not apply to any notification during the **Period of Insurance** of any **Claim** resulting from such facts or circumstances, provided that:
 - i. there is an absence of fraudulent non-compliance with the **Insured**'s duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances; and
 - ii. the **Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** to the **Insurer**, under a professional indemnity policy issued by the **Insurer** and was insured by the **Insurer** at the time when the **Insured** first became aware of such facts or circumstances; and
 - iii. the **Insurer** may reduce its liability under the **Policy** to the extent of any prejudice the **Insurer** may suffer in connection with the **Insured**'s failure to notify the facts or circumstances giving rise to a **Claim** prior to the **Period of Insurance**.

3.12 Run off cover

The **Insurer** agrees to continue the cover under this **Policy** to any person, corporation, subsidiary or entity insured by this **Policy** until expiry of the **Period of Insurance** if:

- a. such person retires or otherwise ceases to provide professional services in connection with the **Business**; or
- b. such entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity.

Provided that this extension only applies in relation to civil liability for a breach of professional duty in the conduct of the **Business** by reason of any act, error or omission occurring prior to the date that any such person retires or otherwise ceases to provide professional services in connection with the **Business** or such corporation, entity or subsidiary ceases to exist or operate or is consolidated with, merged into or acquired by any other entity.

4. Exclusions

This **Policy** does not provide any indemnity, or **Defence Costs**, in respect of any **Claim**:

4.1 Known Circumstances

Arising from, attributable to or in any way connected with any facts, circumstances or occurrences:

- a. noted on the **Proposal** for the current **Period of Insurance** or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b. of which the **Insured** was aware prior to the commencement of the **Period of Insurance** and which the **Insured** knew (or ought reasonably to have realised) may give rise to a **Claim**.

4.2 Known Claims

Arising from, attributable to or in any way connected with any **Claim** first made against the **Insured** prior to the start of the **Period of Insurance**.

4.3 Retroactive Date

Arising from, attributable to or in any way connected with any act, error or omission occurring in whole or part prior to the **Retroactive Date**.

4.4 Dishonesty

Arising from, attributable to or in any way connected with any dishonest, fraudulent, criminal or malicious conduct of the **Insured** or any **Employee** or other person or party employed by the **Insured**. Such conduct also includes, but is not limited to, acts or omissions which are or are alleged to have been:

- a. committed with reckless disregard for the consequences thereof; and
- b. a wilful breach of statute, contract or duty.

4.5 Contractual Liability

Arising from, attributable to or in any way connected with any duty, obligation or liability assumed by the **Insured** by contract, warranty, guarantee or indemnity, unless such duty, obligation or liability would have existed in the absence of such assumption.

4.6 Related Parties

Made, brought or maintained by or on behalf of:

- a. any other person or entity who is an **Insured**; or
- b. any person or entity who or which is related to or associated with an **Insured**, unless such person or entity is acting without any prior direct or indirect solicitation, co-operation or assistance from an **Insured**.

4.7 Insolvency

First made or intimated subsequent to the date upon which the **Insured** becomes **Insolvent**. This Exclusion shall not apply where the **Insured** establishes, to the satisfaction of the **Insurer**, that the **Claim** would have arisen notwithstanding that the **Insured** was **Insolvent**.

4.8 Consensual Claims

Made, brought or maintained by or on behalf of any person or entity with the solicitation, co-operation or assistance of any **Insured**.

4.9 Rights of Contribution or Indemnity

For or in connection with any liability, loss or damage in respect of which the **Insured** has at any time foregone, waived, excluded or limited a right of recovery.

4. Exclusions (cont'd)

4.10 Multiple Damages and Fines and Penalties

For:

- a. exemplary, aggravated, punitive or liquidated damages; or
- b. fines or penalties.

4.11 Conflict of Interest

Arising from, attributable to or in any way connected with any **Conflict** provided always that this Exclusion does not derogate from or limit Exclusion 4.6.

4.12 Information Technology Hazards

Arising from, attributable to or in any way connected with:

- a. loss, corruption or destruction of data, coding programme or software; or
- b. unavailability of data and malfunction of hardware, software and embedded chips.

4.13 Geographical Limits

Arising from, attributable to or in any way connected with any act, error or omission occurring outside the territorial limits of the Commonwealth of Australia or New Zealand.

4.14 Jurisdiction

Brought in a court outside the Commonwealth of Australia or of New Zealand or brought in a court within the Commonwealth of Australia or of New Zealand to enforce a judgement handed down in a court outside the Commonwealth of Australia or of New Zealand.

4.15 Asbestos

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.

4.16 War, Terrorism and Nuclear Material

- a. caused by or arising directly or indirectly out of or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion, coup, military rising, insurrection, military or usurped power, rebellion, revolution, confiscation, nationalisation, requisition or looting, sacking or pillage, destruction of or damage to property by or under the order of any government or local authority;
- b. for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any **Act of Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- c. for death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**;
- d. caused by or arising directly or indirectly out of or in connection with nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste or from the combustion of nuclear fuel or from any other self sustaining process of nuclear fission.

4.17 Trading Debt

Arising from, attributable to or in any way connected with any trading debt incurred by the **Insured** or any guarantee given by the **Insured** for any debt.

4.18 Occupier's Liability

Arising from, attributable to or in any way connected with the ownership, occupation, control or management of real property by an **Insured**.

4. Exclusions (cont'd)

4.19 Pollution

Arising from, attributable to or in any way connected with the actual, alleged or threatened dispersal, release or escape of **Pollutants** into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such **Pollutants**, or seepage, pollution or contamination howsoever occurring.

4.20 Year 2000 Conformity

Arising from, attributable to or in any way connected with computer hardware or software that does not meet Year 2000 Conformity, within the meaning of that term in Miscellaneous Paper SAA/SNZ MP77:1998 "A Definition of Year 2000" published by Standards Australia and as amended or substituted from time to time.

4.21 Molestation

Arising from, attributable to or in any way connected with the molestation of, or physical or psychological interference with, any person.

5. Claims Conditions

5.1 Claims Reporting

The **Insured** must give to the **Insurer** immediate notice in writing of any **Claim** against the **Insured**. Such notice shall be within the **Period of Insurance** and sent to The Claims Manager, Calliden Limited PO BOX 348, Milsons Point, NSW 1565.

5.2 Claims Co-operation and Mitigation

The **Insured** will not make any offer or payment or admit liability for or settle any **Claim** or incur any costs or expenses or otherwise assume any liability in connection therewith without the written consent of the **Insurer**.

The **Insured** shall not forego, waive, exclude or limit any rights of recovery. The **Insured** shall otherwise, at its own cost, diligently do all things reasonably practicable to avoid or minimise any liability hereunder.

The **Insurer** shall not be liable for any settlement or other liability assumed, or costs and expenses incurred by the **Insured** without the written consent of the **Insurer**.

The **Insured** shall, at its own cost, immediately provide to the **Insurer** such assistance and information as the **Insurer** may reasonably require to enable the **Insurer** to determine whether or not the **Insured** is entitled to an indemnity under this **Policy**, and to enable the **Insurer** to investigate and defend any **Claim**.

5.3 Conduct of Defence

The **Insurer** shall be entitled at any time to take over and conduct in the name of the **Insured** the investigation, defence and/or settlement of any **Claim**. Any amounts incurred by the **Insurer** or the **Insured** with the written consent of the **Insurer** in the conduct of the defence on behalf of the **Insured** shall be deemed to be part of **Defence Costs**.

If the conduct of the defence of a **Claim** is assumed by the **Insurer**, or the **Insured** is permitted by the **Insurer** to expend costs and expenses in the defence of the **Claim**, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not:

- i. indicate an **Insured** is entitled to indemnity under the **Policy**;
- ii. waive or prejudice the **Insurer's** rights under the **Policy**.

5.4 Discharge of Liability

If in the opinion of the **Insurer** the amount required to dispose of any **Claim** may exceed the available **Limit of Indemnity**, the **Insurer** shall be entitled, at its discretion, to discharge its liability by paying (or agreeing to pay upon settlement of the **Claim**) the available **Limit of Indemnity** to the **Insured** or on the **Insured's** behalf and paying the **Defence Costs** incurred up to the time of election to discharge its liability. If at the time of making such an election the **Insurer** is conducting the defence of the **Claim**, the **Insurer** shall relinquish conduct. The **Insurer** shall have no further liability for **Defence Costs** after written notice of such election has been given to the **Insured**.

If the **Insured** disagrees with a **Claim** settlement recommended by the **Insurer**, the **Insured** may elect to contest such **Claim**. However, the liability of the **Insurer** in respect of the **Claim** will not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred up to the date of such election, less the **Excess**.

5.5 Senior Counsel

If a dispute arises between the **Insurer** and **Insured** as to whether or not to contest any legal proceedings, neither the **Insurer** nor the **Insured** shall be required to contest such legal proceedings unless a **Senior Counsel** (to be mutually agreed upon by the **Insurer** and the **Insured** or, failing agreement, the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended) shall advise that such proceedings should be contested. **Senior Counsel** shall advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the **Insured** and the likely **Defence Costs** that will be incurred in defending the **Claim**. The costs of **Senior Counsel** so advising will be **Defence Costs**.

5.6 Representation Issues

The lawyers instructed by the **Insurer** to act on the **Insured's** behalf can disclose to the **Insurer** any information they receive in that capacity, whenever and from wherever it is obtained. The **Insured** agrees to waive any legal professional or client privilege to the extent such privilege may have prevented disclosure to or use of that information by the **Insurer**. By claiming under this **Policy** the **Insured** authorises such lawyers to disclose this information to the **Insurer** and waives any claims for legal professional or client privilege as against the **Insurer**.

5. Claims Conditions (cont'd)

If there is a dispute between the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to conduct the defence of the **Claim** will also continue to advise the **Insurer** on all issues, including but not limited to the right of the **Insured** to indemnity under the **Policy** or any related issue. It is agreed that this will not prevent those lawyers from acting on the defence of the **Claim** on the instructions of the **Insurer**.

If any actual or potential conflict arises between the respective interests of the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to investigate and defend the **Claim** may cease acting on behalf of the **Insured** and continue to advise the **Insurer** in any dispute with respect to the entitlement of the **Insured** to indemnity under the **Policy**.

The **Insured** agrees that all communications between the **Insurer** and the lawyers appointed by the **Insurer** to investigate, defend or settle a **Claim** are privileged as between the **Insurer** and the lawyers and that the **Insured** is not entitled to demand, access or obtain any such communications or information contained therein.

5.7 Other Insurance

If for any **Claim** or **Defence Costs** there is any other insurance or indemnity which may afford indemnity to the **Insured** or a right of contribution by the **Insurer**, the **Insured** shall notify the **Insurer** and provide full details of such other insurance or indemnity and such further information as the **Insurer** may reasonably require.

6. General Conditions

6.1 Limit of Indemnity

The total liability of the **Insurer** under this **Policy** in respect of any one **Claim**, including **Defence Costs**, and in the aggregate for all **Claims**, including **Defence Costs**, (including any amounts paid or which have been agreed will be paid in accordance with Condition 5.4) will not exceed the **Limit of Indemnity**.

6.2 Excess

The **Insurer's** liability under this **Policy** shall apply only to that part of the amount, up to the available **Limit of Indemnity**, required to dispose of a **Claim**, which exceeds the **Excess**. Such **Excess** will be borne by the **Insured** and shall remain uninsured. The **Excess** is inclusive of **Defence Costs**.

The **Excess** applies to each **Claim** covered by this **Policy**. However, where more than one **Claim** arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one **Excess** is payable under the **Policy**.

In the event a payment required to dispose of a **Claim** does not exceed the **Excess**, that part of the **Excess** not required to dispose of such **Claim** shall be applied to the **Defence Costs** otherwise paid or payable by the **Insurer** and such amount shall be paid by the **Insured** to the **Insurer** or at its direction on request.

Where the **Insurer** makes a payment in respect of a **Claim**, including for **Defence Costs**, which includes payment of part or all of the **Excess**, the **Insured** shall within 30 days of being notified by the **Insurer** reimburse the **Insurer** for the amount of the **Excess** paid by the **Insurer** on behalf of the **Insured**.

6.3 Material Changes to the Risk

The **Insured** will immediately advise the **Insurer** of any material alteration to the **Insured's** professional **Business** including but not limited to:

- a. any change in the nature of the services comprising the **Business**; or
- b. any merger with or acquisition by the **Insured** of, or acquisition of the **Insured** by, any other business; or
- c. an **Insured** going into bankruptcy, administration, receivership or liquidation; or

- d. an **Insured** entering into a debt agreement or arrangement with creditors; or
- e. the cancellation or suspension of, or the imposing of special conditions upon, the **Insured's** statutory professional registration or licensing or registration with a professional association.

6.4 Cancellation

This **Policy** may be cancelled by the **Insured** giving written notice to the **Insurer** at any time. This **Policy** may be cancelled by the **Insurer** in accordance with the Insurance Contracts Act (1984).

Upon cancellation by the **Insured** a refund of premium will be allowed, pro-rata less 15%, for the unexpired portion of the **Period of Insurance**.

6.5 Governing Law

This **Policy** is to be governed in by the laws of Australia and the State or Territory where the **Policy** was issued. The relevant courts of the place where the **Policy** was issued shall have jurisdiction in any dispute concerning or under this **Policy**.

6.6 Validity

This **Policy** is not valid unless its Schedule is attached and has been signed by a duly authorised officer or agent of the **Insurer**.

6.7 GST Basis of Settlement

The amount that the **Insurer** is liable to pay under this **Policy** will be reduced by the amount of any input tax credit that the **Insured** is or may be entitled to claim for the supply of goods or services covered by that payment.

If the **Insured** is entitled to an input tax credit for the premium, the **Insured** must inform the **Insurer** of the extent of that entitlement at or before the time the **Insured** makes a claim under this **Policy**. The **Insurer** will not indemnify the **Insured** for any GST liability, fines or penalties that arise from or is attributable to the **Insured's** failure to notify the **Insurer** of the **Insured's** entitlement (or correct entitlement) to an input tax credit on the premium.

6. General Conditions (cont'd)

If the **Insured** is liable to pay an **Excess** under this **Policy**, the amount payable will be calculated after deduction of any input tax credit that the **Insured** is or may be entitled to claim on payment of the **Excess**.

6.8 Interpretation

Paragraph headings are included for convenience only and do not form part of this **Policy** for the purposes of interpretation of this **Policy**. Words and expressions in the singular include the plural and vice versa. Words (except headings) in bold lettering have special meaning and are defined in the **Policy**. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

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