



Design & Construct Professional Indemnity
Insurance Policy

Specimen

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IMPORTANT NOTICES

Privacy Policy

Assetinsure and the Insurer are committed to safeguarding and protecting the privacy of personal information. We are bound by the provisions of the Privacy Act 1988 which sets out the standards to be met in the collection, use and disclosure of personal information.

If you require further information about our Privacy Policy, please refer to the detailed information on our website – www.assetinsure.com.au/interest.asp

If you want to access your personal information held by Assetinsure and/ or the Insurer, or wish to make a complaint in relation to privacy issues, please contact us either electronically: info@assetinsure.com.au or complaints@assetinsure.com.au or at 44 Pitt Street, Sydney, NSW, 2000.

General Insurance Code of Practice

Assetinsure has adopted the General Insurance Code of Practice which stipulates minimum standards of services to our clients. If you would like further information in regard to the Code of Practice, please refer to the Code of Practice website – www.codeofpractice.com.au or our own website – www.assetinsure.com.au/interest.asp

The Insurer is not a signatory to the Code of Practice.

Complaints Handling Procedure

If you think we have let you down in anyway, or our service is not what you expect, please tell us so we can assist.

Contact information and details of our complaints handling procedure are available on our website - www.assetinsure.com.au/interest.asp

Words with Special Meaning

In this policy document the words in bold (except for titles) have special meaning and are defined – please refer to the Definitions section.

Financial Claims Scheme

This policy may be a “protected policy” under the Financial Claims Scheme (FCS) administered by the Australian Prudential Regulation Authority (APRA).

In the event the insurer of a “protected policy” becomes insolvent, a person entitled to claim under that insurance may be entitled to payment under the FCS.

Access to the FCS is subject to eligibility criteria.

Information about the FCS can be obtained from the APRA website www.apra.gov.au and the APRA hotline 1300 13 10 60.



Preamble

This is a claims made and notified insurance policy whereby Assetinsure Pty Ltd ABN 65 066 463 803 (**Assetinsure**) as the agent for the **Insurer** has accepted the **Proposal Form** from the **Insured**. **Assetinsure** for and on behalf of the **Insurer** has relied on the information contained in the **Proposal Form** in determining whether to enter into this **Policy** and the terms of this **Policy**.

Assetinsure for and on behalf of the **Insurer** agrees with the **Insured** to provide insurance in accordance with the terms of this **Policy** in consideration of payment in full of the premium and any associated charges specified in the **Schedule** or any endorsement to this **Policy**.

Insuring Clause

The **Insurer** will indemnify the **Insured** for:

1. civil liability for any **Loss** incurred by the **Insured** arising from any **Claim** first made against the **Insured** and which is notified to the **Insurer** during the **Policy Period** for any actual or alleged **Wrongful Professional Act** of the **Insured** in the conduct of the **Professional Activities and Duties** by the **Insured**; and
2. **Defence Costs** incurred either by the **Insurer** or the **Insured** with the prior written consent of the **Insurer**.

Specimen



Automatic Extensions

The following Extensions are automatically included in this **Policy** and are always subject to the other terms, conditions and exclusions of this **Policy** unless specifically expressed to the contrary.

In no event will the operation of any Automatic Extension increase the **Limit of Indemnity** specified in the **Schedule**.

1. Inquiry Costs

The **Insurer** will indemnify the **Insured** for any **Inquiry Costs** incurred by any **Insured** with the prior written consent of the **Insurer** in respect of an **Inquiry** provided that:

- i. the **Insured** is legally required or compelled to attend such **Inquiry**; and
- ii. such **Inquiry** pertains to the conduct of the **Professional Activities and Duties** by the **Insured** or matters directly arising therefrom; and
- iii. notice of such **Inquiry** is first received by the **Insured** during the **Policy Period** and notified to the **Insurer** during the **Policy Period**; and
- iv. the aggregate amount of all payments made by pursuant to this Extension will not exceed the Sub-Limit specified in Item 6 of the **Schedule**.

2. Misleading, Deceptive or Unconscionable Conduct

Definition 20 (Wrongful Professional Act) of this **Policy** is extended to include any act, error or omission in a professional capacity that is:

- i. misleading or deceptive or likely to mislead or deceive; or
- ii. unconscionable.



3. Loss of Documents

The **Insurer** will indemnify the **Insured** for any reasonable costs and expenses incurred by the **Insured** with the prior written consent of the **Insurer** to replace and/or restore any **Documents** which have been damaged, destroyed or lost and after diligent search cannot be found, provided that:

- i. such **Documents** were damaged, destroyed or lost in the conduct of the **Professional Activities and Duties** by the **Insured**; and
- ii. such **Documents** were owned by a third party and were in the physical possession of the **Insured** within the territorial limits of the Commonwealth of Australia or New Zealand; and
- iii. the subject damage, destruction or loss is first discovered by the **Insured** and notified to the **Insurer** during the **Policy Period**; and
- iv. notwithstanding anything to the contrary in this Extension, the **Insurer** will not indemnify the **Insured** in respect any damage, destruction or loss of any **Documents** directly or indirectly arising from, in whole or in part:
 - a. wear and tear or any other gradual process; or
 - b. any computer virus or other malicious software; or
 - c. any act, error or omission committed or made, or allegedly committed or made, by any person or entity who at the time of such act, error or omission was not an **Insured**; and
- v. the **Insured** provides satisfactory documentary proof of such damage, destruction or loss; and
- vi. the aggregate amount of all payments made by the **Insurer** pursuant to this Extension will not exceed the Sub-Limit specified in Item 6 of the **Schedule**.

4. Vicarious Liability

The **Insurer** will indemnify the **Insured** for any **Loss** incurred by the **Insured** arising from any **Claim** first made against the **Insured** and which is notified to the **Insurer** during the **Policy Period** for any actual or alleged **Wrongful Professional Act** of any **Agent** in the conduct of the **Professional Activities and Duties** by such **Agent**.

This Extension does not operate to indemnify any such **Agent** themselves, unless that **Agent** is also an **Insured**.



Optional Extensions

The following Extensions are only included in this **Policy** where agreed by the **Insurer** and so specified in Item 7 of the **Schedule**. All such Extensions are always subject to the other terms, conditions and exclusions of this **Policy** unless specifically expressed to the contrary.

In no event will the operation of any Optional Extension increase the **Limit of Indemnity** specified in the **Schedule**.

1. Dishonesty

The **Insurer** shall indemnify the **Insured** for any **Loss** incurred by the **Insured** arising from any **Claim** first made against the **Insured** and which is notified to the **Insurer** during the **Policy Period** and which would otherwise be excluded only by reason of Exclusion 1(a) of this **Policy**.

However, this Extension does not operate to indemnify:

- i. any party comprising the **Insured** engaging in or condoning any dishonest, fraudulent, criminal, malicious, reckless or wilful conduct that is the subject of Exclusion 1(a); or
- ii. the **Insured** for any **Loss, Defence Costs**, settlement or any other payment directly or indirectly arising out of, based upon, attributable to or in consequence of any conduct occurring after the date on which the **Insured** first discovered, or had reasonable cause for suspicion of, any dishonest, fraudulent, criminal, malicious, reckless or wilful conduct that is the subject of Exclusion 1(a).

The aggregate amount of all payments made by the **Insurer** pursuant to this Extension (including any applicable **Defence Costs**) will not exceed the Sub-Limit specified in Item 7 of the **Schedule**.

2. Automatic Reinstatement

The **Insurer** agrees to reinstate the **Limit of Indemnity** in respect of **Loss, Defence Costs, Inquiry Costs**, settlements or any other payments arising from subsequent **Claims** or **Inquiries** unrelated to any previously notified **Claim** or **Inquiry**; however the aggregate amount so reinstated in respect of all **Loss, Defence Costs, Inquiry Costs**, settlements and any other payments which may be the subject of indemnity under this **Policy** shall not exceed the **Limit of Indemnity** (subject always to any applicable Sub-limit specified in any Extension or in the **Schedule**).

The liability of the **Insurer** for all **Loss, Defence Costs**, settlements and any other payments in respect of any single **Claim** will not exceed the **Limit of Indemnity**, and for the purposes of this Extension, where more than one **Claim** arises from, is based on, is attributable to or is in consequence of a **Single Wrongful Professional Act**, such **Claims** shall jointly constitute a single **Claim**.

Reinstatement under this Extension only applies in excess of the total aggregate indemnity available under any policy or policies which apply in excess of this **Policy**.



3. Joint Venture Liability

The **Insurer** will indemnify the **Insured** for any **Loss** incurred by the **Insured** arising from any **Claim** first made against the **Insured** and which is notified to the **Insurer** during the **Policy Period** for any actual or alleged **Wrongful Professional Act** of the **Insured** and/ or any joint venture partner of the **Insured** in the conduct of the **Professional Activities and Duties** whilst engaged in any unincorporated joint venture specified in Item 12 of the **Schedule**.


This Extension does not operate to indemnify any such joint venture partner of the **Insured**.

4. Costs of Mitigation or Rectification

- i. The **Insurer** will indemnify the **Insured** for any **Mitigation Costs** directly incurred by the **Insured** in taking reasonable and necessary action to mitigate or rectify the direct and unintended effect of any **Wrongful Professional Act** of the **Insured** in the conduct of the **Professional Activities and Duties** by the **Insured**.

Such indemnity will be strictly subject to:

- a. the **Insured** first discovering such direct and unintended effect of a **Wrongful Professional Act** during the **Policy Period** and notifying the **Insurer** in writing of the same as soon as practicable during the **Policy Period**; and
 - b. the **Insured** providing prior written notice to the **Insurer** during the **Policy Period** of the intention to take such action that will incur **Mitigation Costs**; and
 - c. the **Insured** providing the **Insurer** with appropriate documentary evidence that such action is reasonable and necessary, together with an estimate of **Mitigation Costs** associated with the proposed mitigation or rectification; and
 - d. the **Insurer** providing written consent to the **Insured** prior to such **Mitigation Costs** being incurred; and
 - e. the **Insurer** retaining the right to place any reasonable conditions or limitations on any such consent.
- ii. The onus of, and any costs and expenses incurred in, proving entitlement to indemnity under this Extension shall rest solely with the **Insured**.
 - iii. This Extension does not operate to indemnify the **Insured** for any **Mitigation Costs** directly or indirectly arising out of, based upon, attributable to or in consequence of any effect of a **Wrongful Professional Act** or any **Wrongful Professional Act**:
 - a. that has been notified under any previous policy; or
 - b. declared on the **Proposal Form** or any previous proposal form or application for insurance; or
 - c. of which any **Insured** was aware, or ought reasonably to have been aware, prior to the **Policy Period**.

- 
- iv. The **Insurer** shall only be liable to indemnify the **Insured** under clause (i) of this Extension for such amount of any **Mitigation Costs** which is in excess of the retention amount specified in Item 8 of the **Schedule**, provided always that:
 - a. the retention amount is to be borne by the **Insured** and shall remain uninsured; and
 - b. a single retention amount shall apply to all **Mitigation Costs** arising from a **Single Wrongful Professional Act**.
 - v. The aggregate amount of all payments made by the **Insurer** pursuant to this Extension will not exceed the Sub-Limit specified in Item 7 of the **Schedule**.

5. Infringement of Intellectual Property Rights

Definition 19 (Wrongful Professional Act) of this **Policy** is extended to include any infringement of **Intellectual Property Rights** whilst acting in a professional capacity in the conduct of the **Professional Activities and Duties**.

However, such definition shall not include any:

- i. intentional infringement of **Intellectual Property Rights**; or
- ii. infringement of **Intellectual Property Rights** arising from any promotional, marketing or advertising material circulated, broadcast or utilised in any way by the **Insured**.

The aggregate amount of all payments made by the **Insurer** pursuant to this Extension will not exceed the Sub-Limit specified in Item 7 of the **Schedule**.

6. Novation Agreements

Exclusion 1(d)(i) (Contractual or Commercial Liabilities) of this **Policy** shall not apply in respect of any liability arising directly from **Professional Activities and Duties** previously conducted by a third party for which the **Insured** has assumed responsibility pursuant to a deed of novation or written novation agreement.

However, this Extension does not operate to indemnify the **Insured** for any **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or any other payment directly or indirectly arising out of, based upon, attributable to or in consequence of:

- i. any liability in connection with an increase in the standard of care beyond that which would have applied in the absence of any applicable provision of any deed or agreement; or
- ii. any **Wrongful Professional Act** in respect of the subject **Professional Activities and Duties** of which any **Insured** was aware at the time the applicable deed or agreement was executed; or
- iii. any **Wrongful Professional Act** in respect of the subject **Professional Activities and Duties** of which the **Insured** ought reasonably to have been aware, by reason of an appropriate due diligence review of the subject **Professional Activities and Duties** or otherwise, at the time the applicable deed or agreement was executed.



Exclusions

1. The **Insurer** will not be liable to indemnify the **Insured** for any **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or any other payment directly or indirectly arising out of, based upon, attributable to or in consequence of:

a) Dishonesty or Deliberate Conduct

- i. any actual or alleged dishonest, fraudulent, criminal or malicious conduct of any **Insured**, or any **Agent**; or
- ii. any conduct of any **Insured** or any **Agent** committed or allegedly committed with a reckless disregard for the consequences thereof; or
- iii. any conduct of any **Insured** or any **Agent** committed or allegedly committed with criminal intent or purpose, or with knowledge that such conduct was in breach of any statute, contract or duty:

b) Fidelity

any loss of money, precious metal, precious or semi-precious gemstones, negotiable instruments including but not limited to shares, bearer bonds, coupons, stamps, bank or currency notes in the custody or control of the **Insured** or any **Agent**:

c) Insolvency

any liquidation, bankruptcy or insolvency of the **Insured**:

d) Contractual or Commercial Liabilities

- i. any liability assumed by the **Insured** or any **Agent** under a contract, unless such liability would have attached to the **Insured** in the absence of such contract; or
- ii. any liability assumed by the **Insured** or any **Agent** under any express guarantee or warranty; or
- iii. any duty or obligation assumed by the **Insured** or any **Agent** that is not assumed in the normal conduct of the **Professional Activities and Duties**; or
- iv. any trading debt incurred by the **Insured**; or
- v. any refund or waiver of professional fees:



e) Known Circumstances

- i. any facts or circumstances which may give rise to a **Claim** or any **Inquiry** or any actual or alleged **Wrongful Professional Act** or related **Wrongful Professional Act** notified under any previous policy; or
- ii. any facts or circumstances which may give rise to a **Claim** or any **Inquiry** or to any actual or alleged **Wrongful Professional Act** or related **Wrongful Professional Act** declared in the **Proposal Form** or any previous proposal form or application for insurance; or
- iii. any facts or circumstances which may give rise to a **Claim** or any **Inquiry** of which any **Insured** was aware, or ought reasonably to have been aware, prior to the **Policy Period**:

f) Retroactive Date

any **Wrongful Professional Act** or any other act, error or omission committed or alleged to have been committed prior to the **Retroactive Date**:

g) Product Liabilities

- i. the replacement of or lack of efficacy of any goods manufactured, sold, designed, specified, formulated, constructed, installed, distributed, treated, serviced, altered, repaired or supplied by the **Insured**; or
- ii. any defect in any goods manufactured, sold, designed, specified, formulated, constructed, installed, distributed, treated, altered, repaired, supplied or serviced by the **Insured**;

except where such **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or payment arises solely and directly from any advice, design or specification prepared by the **Insured** in the conduct of the **Professional Activities and Duties**:

h) Bodily Injury/ Property Damage

- i. bodily or mental injury, sickness, disease, death or emotional distress of any person, or
- ii. damage to or destruction of any tangible property, including loss of use thereof;

except where **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or payment arises solely and directly from a breach of a duty of care by the **Insured** in the conduct of the **Professional Activities and Duties**:

i) Obligations to Employees

bodily or mental injury, sickness, disease, death or emotional distress of any person arising out of, or in the course of their employment or deemed employment by, or apprenticeship with, the **Insured**:

j) Occupier's Liability

any occupation, ownership or management of any real property by the **Insured** or any **Agent**:



k) Motor Vehicles/ Aircraft/ Watercraft

the ownership, use, operation, or maintenance of any motor vehicle, aircraft or watercraft of any kind by the **Insured** or any **Agent**:

l) War/ Terrorism

- i. war, invasion, acts of foreign enemies, or hostilities (whether war is declared or otherwise); or
- ii. insurrection, civil or military uprising, rebellion, revolution, civil war or military or usurped power; or
- iii. terrorism; being any act, or preparation in respect of an act, of any person or group of people, including but not limited to the use of or threat of force or violence, where the purpose of such act by its nature or context is to further a political, religious, ideological, ethnic or similar aim and/ or to intimidate or influence a government (whether lawfully constituted or otherwise), the public or any section of the public; or
- iv. the confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority; or
- v. the imposition of any economic, trade or political sanctions (whether lawful or otherwise) by any sovereign power; or
- vi. the use of military or para-military force or personnel or warlike action taken by any government, public or local authority to control, prevent, suppress, defend against, retaliate or to otherwise respond to any act described in paragraphs (i) to (v) of this Exclusion:

m) Nuclear Risks

- i. the use, storage, handling or transport of any radioactive material; or
- ii. the use or operation of any nuclear reactor, particle accelerator, particle generator or similar device; or
- iii. ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, waste or other radioactive material whether occurring naturally or otherwise; or
- iv. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- v. the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon, nuclear explosive device or nuclear component thereof;

except where such **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or payment arises from the use by the **Insured** or any **Agent** of radioisotopes, radium or radium compounds away from the place where such are made or produced and such use is exclusively incidental to ordinary industrial, educational, medical or research activities in the conduct of the **Professional Activities and Duties**:



n) Asbestos

or contributed to or aggravated by asbestos in any form or quantity:

o) Geographical Limits

any **Wrongful Professional Act** or other act, error or omission committed, attempted or alleged to have been committed or attempted in the United States of America, Canada, their territories, protectorates or dependencies:

p) Licensing

any **Wrongful Professional Act** or other act, error or omission committed, attempted or alleged to have been committed or attempted by any **Insured** or any **Agent** in the conduct of any activity for which such person or entity is not properly licensed, registered or authorised in accordance with any relevant legislation or regulation:

q) Insurance and Financial Advice

- i. the effecting or maintenance of, or the failure to effect or maintain, any insurance; or
- ii. the provision of, or failure to provide, advice in respect of insurance; or
- iii. the provision of finance; or
- iv. the provision of, or failure to provide, advice in respect of financial, investment or tax matters;
- v. the valuation of any real property:

r) Cost Estimates

any estimate of the costs of construction, installation, fabrication or erection except where such estimate was compiled by an appropriately qualified quantity surveyor.



2. The **Insurer** will not be liable to indemnify the **Insured** for any **Loss, Defence Costs, Inquiry Costs**, settlement or any other payment in respect of any **Claim** or **Inquiry**:

a) Known Claims and Inquiries

- i. that has been notified under any previous policy; or
- ii. declared in the **Proposal Form** or any previous proposal form or application for insurance; or
- iii. known to any **Insured** prior to the **Policy Period**:

b) Related Parties

which is brought by or initiated by or on behalf of;

- i. any **Insured**; or
- ii. any person who is a spouse, domestic partner, companion, parent, child or sibling of the **Insured**, or parent of a spouse, domestic partner or companion of the **Insured**; or
- iii. any person or entity with a financial, executive or managerial interest in the **Insured**; or
- iv. any entity in which any **Insured** has a financial, executive or managerial interest;

this Exclusion however, does not apply to any **Loss, Defence Costs**, settlement or other payment arising from any **Claim** made by an independent third party without the co-operation or solicitation of any **Insured**:

c) Jurisdictional Limits

- i. brought in a court of law or before a judicial, administrative, arbitral, investigative or disciplinary panel of any description outside the Commonwealth of Australia, New Zealand, their territories, protectorates or dependencies; or
- ii. directly or indirectly arising out of, based upon, attributable to or in consequence of the enforcement of any judgement, order or award obtained within or pursuant to the laws of the United States of America, Canada, their territories, protectorates or dependencies.

3. Waived or Limited Rights

The **Insurer** will not be liable to indemnify the **Insured** for any **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or any other payment for which the **Insured** has in any way waived, limited or reduced their rights of recovery or contribution from any other party.



General Conditions

1. Limit of Indemnity

- i. The total liability of the **Insurer** under this **Policy** for all **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlements or any other payment in respect of any one **Claim** or **Inquiry** (as applicable) and in the aggregate for all **Claims** and **Inquiries** shall in no event exceed the **Limit of Indemnity** or the applicable Sub-limit specified in any Extension or in the **Schedule**.
- ii. Nothing in this **Policy** operates to increase the **Limit of Indemnity** or any Sub-Limit specified in any Extension or in the **Schedule**.
- iii. The **Limit of Indemnity** is inclusive of any Sub-Limit specified in any Extension or in the **Schedule**.
- iv. Any Sub-Limit specified in any Extension or in the **Schedule** is an aggregate limit inclusive of any applicable **Defence Costs**.

2. Retention

- i. The **Insurer** shall only be liable to indemnify the **Insured** for such amount of any **Loss, Defence Costs, Inquiry Costs**, settlement or other payment that may be the subject of indemnity under this **Policy** (including any Extension or Optional Extension) in respect of any one **Claim** or **Inquiry** which is in excess of the retention amount specified in Item 8 of the **Schedule**. The retention amount is to be borne by the **Insured** and shall remain uninsured.
- ii. A single retention amount shall apply to all **Loss, Defence Costs**, settlements or other payments arising from all **Claims** alleging a **Single Wrongful Professional Act**.

3. Agency

- i. **Assetinsure** is not the insurer of this **Policy** but has been granted an authority by the **Insurer** to underwrite and issue this **Policy** for and on behalf of the **Insurer** under an agency agreement between **Assetinsure** and the **Insurer**.
- ii. **Assetinsure** is also authorised by the **Insurer** to:
 - a. accept all notifications in respect to **Claims**; and
 - b. accept all other notices, statements, writs, processes and other communications; and
 - c. issue all notices, statements and other communications (including but not limited to any consent required under any provision of this **Policy**);in connection with this **Policy**.
- iii. All notifications, notices, statements, writs, processes and other communications in connection with this **Policy** shall be directed to **Assetinsure** unless otherwise instructed in writing by **Assetinsure** or the **Insurer**.



- iv. The **Insured** shall, pursuant to General Condition 3(ii)(a) above, notify **Assetinsure** in writing of any **Claim** made against the **Insured**, or any notice of **Inquiry** received by the **Insured**, as soon as practicable during the **Policy Period**.
- v. All notifications and other correspondence in respect to any **Claim** or **Inquiry** should be forwarded to:

Claims Department
Assetinsure Pty Ltd

44 Pitt Street
Sydney NSW 2000
Australia

PO Box R299
Sydney NSW 1225
Australia

4. Conduct of Defence

- i. The **Insured** shall not settle any **Claim**, incur any **Defence Costs**, **Inquiry Costs** or **Mitigation Costs**, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any **Claim** or **Inquiry** without the prior written consent of the **Insurer**. The **Insurer** shall not be liable for any settlement, **Defence Costs**, **Inquiry Costs**, **Mitigation Costs**, admission, offer or payment, or assumed obligation to which it has not given prior written consent.
- ii. The **Insurer** shall be entitled at any time to conduct, in the name of the **Insured**, the defence or settlement of any **Claim**, or to conduct the representation of the **Insured** at any **Inquiry**. Any amount incurred by the **Insurer** on behalf of the **Insured** shall be deemed to be part of any **Loss**, **Defence Costs** or **Inquiry Costs** (as applicable) in respect of such **Claim** or **Inquiry**.
- iii. The **Insured** shall use due diligence and do and concur in all things reasonably practicable to avoid or diminish any **Loss**, **Defence Costs**, **Inquiry Costs** and **Mitigation Costs**.
- iv. The **Insured** shall disclose to the **Insurer** all relevant information and shall provide assistance to the **Insurer** as it may reasonably require to enable the **Insurer** to investigate and to defend any **Claim**, to provide representation at any **Inquiry** and/ or to enable the **Insurer** to determine its liability under this **Policy**. The **Insured** shall bear their own costs incurred in complying with this clause.

5. Insured's Rights in Respect of Defence and Settlement

- i. The **Insurer** shall not require the **Insured** to contest any **Claim** unless a Senior Counsel (to be mutually agreed by the **Insurer** and the **Insured**) shall advise that such **Claim** should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential **Loss**, **Defence Costs**, settlement and any other payment) and the prospects of the **Insured** successfully defending the **Claim**. The cost of such Senior Counsel's opinion shall be regarded as part of the **Defence Costs**.
- ii. In the event that the **Insurer** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of the **Insurer** for all **Loss**, **Defence Costs**, settlement or other payment in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled.



6. Subrogation

- i. If indemnity is granted under this **Policy** in respect of any **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or any other payment, the **Insurer** shall be subrogated to all rights of recovery, contribution and indemnity of the **Insured** in respect of such **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or payment.
- ii. The **Insured** must always act to secure and preserve all rights of recovery, contribution and indemnity, and must provide all necessary assistance and execute all documents to enable the **Insurer** to enforce those rights referred to in General Condition 6(i).

7. Other Insurance

- i. This **Policy** shall apply only in excess over:
 - a. any other insurance specified in the **Proposal Form**;
 - b. any other specific project insurance declared to the **Insurer** under General Condition 7(ii);and any renewal or substitute for such insurances.
- ii. The **Insured** must notify the **Insurer** of any other specific project insurance to which it is a party or an insured, within 30 days of the taking out of such insurance.

8. Notice and Authority

The **Insured** specified in Item 2 of the **Schedule** shall act on behalf of all parties comprising the **Insured** with respect to;

- i. the receipt and acknowledgement of all notices required by law; and
- ii. the giving and receiving of any notice under this **Policy**; and
- iii. the payment of premiums and any other charges that may become due under this **Policy**; and
- iv. the receipt and acceptance of any endorsements issued to form a part of this **Policy**.

9. Assignment

This **Policy** and any rights hereunder cannot be assigned without the prior written consent of the **Insurer**.

10. Governing Law

Any interpretation of this **Policy** relating to its construction, validity or operation shall be made in accordance with the laws of the Commonwealth of Australia and the state or territory in which it is issued and the parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.



11. Plurals and Titles

- i. The titles of the clauses and paragraphs in this **Policy** are for convenience only and do not lend any meaning to this contract except for reference purposes.
- ii. The singular terms used in this **Policy** include the plural and vice versa, except where the context requires otherwise.
- iii. In this **Policy** words in bold (except for titles of clauses and paragraphs) have special meaning and are defined.

12. Cancellation/Termination

- i. The **Insured** may cancel this **Policy** by giving notice in writing to the **Insurer** at any time.
- ii. The **Insurer** may cancel this **Policy** in any of the relevant circumstances set out in the Insurance Contracts Act 1984, such cancellation to take effect 7 days from the time the notice of cancellation is issued by the **Insurer**.
- iii. After cancellation a refund of premium will be allowed pro-rata of 80% of the premium for the unexpired portion of the **Policy Period**.

13. Currency

All premiums, limits, retentions and other amounts under this **Policy** are expressed and payable in Australian currency.

14. Material Change to Risk

The **Insured** shall immediately notify the **Insurer** of any material change in the risk that is the subject of this **Policy** during the **Policy Period**, including but not limited to:

- i. any merger with or acquisition of another company, entity, partnership or business or the establishment of a subsidiary company or branch office;
- ii. the appointment of any type of administrator, receiver or liquidator, or a trustee in bankruptcy, to any **Insured**;
- iii. any material change in the nature of the professional activities of any **Insured** as represented on the **Proposal Form**;
- iv. the cancellation, suspension or loss of, or the imposition of any restriction or limitation on, any license, registration or authorisation under any legislation or regulation applicable to any aspect of the **Professional Activities and Duties**.

Where such notice is given, the **Insurer** shall be entitled to negotiate with the **Insured** the terms for the continuation of this **Policy**. The **Insurer** shall also be entitled to cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984.



The **Insurer** shall be entitled to reduce any indemnity which may be available to the **Insured** under this **Policy** in respect of any **Loss, Defence Costs, Inquiry Costs, Mitigation Costs**, settlement or any other payment to the extent of any prejudice suffered by the **Insurer** arising from any failure by the **Insured** to comply with this condition.

15. Validity

This **Policy** is not valid unless the **Schedule** is signed by an authorised representative of **Assetinsure**.

16. Treatment of Goods & Services Tax

- i. The liability of the **Insurer** to the **Insured** in respect of any indemnity which may be available under this **Policy** shall be calculated taking into account any input tax credit to which the **Insured** is entitled for any relevant acquisition or would have been entitled had the **Insured** made any such relevant acquisition.
- ii. The retention amount specified in Item 8 of the **Schedule** shall apply net of any entitlement the **Insured** may have to an input tax credit

Specimen



Definitions

1. Agent

means any consultant, sub-consultant, sub-contractor or other agent of the **Insured**.

2. Claim

means any civil proceedings brought against an **Insured** for compensation.

Where more than one **Claim** arises from, is based on, is attributable to, or is in consequence of, a **Single Wrongful Professional Act**, such **Claims** shall jointly constitute a single **Claim** for the purposes of this **Policy**.

3. Defence Costs

means any reasonable and necessary fees, costs and expenses resulting solely from the investigation, adjustment, defence or appeal of a **Claim** in respect of any **Loss** that is the subject of indemnity under this **Policy** but shall not include the travel, accommodation, salary or other employment related costs of any **Insured**.

4. Documents

means deeds, wills, agreements, maps, plans, books, letters, certificates, forms and any other written or printed documents of any nature whatsoever, including any electronic or computer records or reproduction of such physical documents but shall not include;

- any shares, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument; or
- any electronically stored data; or
- any software or computer programme.

5. Inquiry

means any civil, criminal, administrative or disciplinary inquiry, investigation or hearing held by any official or legally constituted body.

6. Inquiry Costs

means any reasonable and necessary legal costs of representation at an **Inquiry** but shall not include any employment, travel or accommodation expenses incurred by the **Insured**.



7. Insured

means

- (i) the legal entities specified in Item 2 of the **Schedule** ;
- (ii) any natural person who is or becomes a principal, partner, director or employee of any entity specified in Definition 7(i) above during the **Policy Period**; but only in respect of service or advice provided solely for and on behalf of such entity in the conduct of the **Professional Activities and Duties**;
- (iii) any natural person who has been a principal, partner, director or employee of any entity specified in Definition 7(i) above in respect of services or advice provided solely for and on behalf of such entity in the conduct of the **Professional Activities and Duties**;
- (iv) in the event of the death, legal incompetence or bankruptcy of any natural person specified in paragraphs (ii) or (iii) above, the estate, spouse and/ or heirs of such natural person.

8. Insurer

means International Insurance Company of Hannover Ltd (Australian Branch) ABN 58 129 395 544 operating as a branch of International Insurance Company of Hannover Ltd (Registered Address: L'Avenir, Opladen Way, Bracknell, Berkshire RG12 0PE, United Kingdom).

9. Intellectual Property Rights

means any copyright, patent, registered design or trademark.

10. Limit of Indemnity

means the **Limit of Indemnity** specified in Item 6 of the **Schedule**.

11. Loss

means compensatory damages and/ or claimants costs (whether awarded or by settlement), but shall not include;

- civil or criminal fines or penalties imposed by law; or
- punitive, exemplary, multiple or aggravated damages; or
- any amount for which the **Insured** is not financially liable or for which there is no legal recourse to any **Insured**.



12. Mitigation Costs

means any reasonable and necessary costs and expenses incurred in taking action to mitigate or rectify the direct and unintended effect of any **Wrongful Professional Act** in the conduct of the **Professional Activities and Duties** but shall not include;

- any cost or expense that was likely to have been incurred in the absence of the subject action; or
- any cost or expense that was likely to have been incurred in the absence of the subject **Wrongful Professional Act**; or
- any loss or diminution of any income, profit, bonus or incentive payment of any description; or
- any interest or other financing costs or charges; or
- any opportunity costs of any **Insured** (including but not limited to internal management & employment expenses); or
- any payment of a compensatory or punitive nature made to any third party.

13. Policy

means this wording, the **Proposal Form**, the **Schedule** and any endorsements to the wording.

14. Policy Period

means the period of time from the inception date to the expiry date specified in Item 5 of the **Schedule**.

15. Professional Activities and Duties

means the performance in a professional capacity of any of the following activities:

- i. design or specification;
- ii. drafting;
- iii. feasibility studies;
- iv. technical information calculation;
- v. advice of a technical nature;
- vi. surveying (including quantity surveying);
- vii. quality and/ or loss control;
- viii. measurement, testing and/ or certification of materials;
- ix. testing and/ or commissioning;
- x. provision of inspection services;
- xi. project or construction management where the **Insured** is specifically remunerated by way of a fee for services in respect of the overall control and supervision of a project;



undertaken by or under the direction and direct control of a properly qualified architect, engineer, surveyor, quantity surveyor or other appropriately qualified professional person.

Professional Activities and Duties do not include the performance or supervision of any physical construction, installation, fabrication, maintenance, erection or other work process where such performance or supervision would normally be undertaken by a building or engineering contractor acting in such capacity alone.

16. Proposal Form

means the proposal form or application for insurance dated as specified in Item 11 of the **Schedule** and:

- any additional documentation attached to such proposal form or application; and
- any documentation or other information provided to **Assetinsure** as the agent of the **Insurer** as part of any submission made by or on behalf of the **Insured** in respect of this insurance.

17. Retroactive Date

means the Retroactive Date specified in Item 10 of the **Schedule**.

18. Single Wrongful Professional Act

means a **Wrongful Professional Act** or any related, continuous or repeated **Wrongful Professional Acts**, whether committed by the **Insured** individually or by more than one **Insured** and whether directed to or affecting one or more than one person or legal entity.

19. Schedule

means the schedule attaching to and forming part of this **Policy**.

20. Wrongful Professional Act

means any breach of professional duty by reason of:

- i. negligence or breach of an express or implied contractual duty to use reasonable care and skill;
- ii. breach of trust, misstatement or misrepresentation;
- iii. breach of fiduciary duty;
- iv. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;
- v. libel, slander or defamation.

(End of Policy Wording – Endorsements may apply.)