



## *Professional Risks*

## PROFESSIONAL INDEMNITY – CIVIL LIABILITY

# *Professional Risks* / PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY

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# Professional Risks

## PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY



**Welcome to NZI. Thank you for selecting us as your insurer. This is your Professional Indemnity – Civil Liability Policy document.**

It will tell you what you are insured for and what you are not insured for, as well as any obligations that you or we must abide by to ensure an enforceable policy. This policy document is a legal contract so please read it thoroughly and keep it in a safe place. If you need help with understanding your policy document, please contact your insurance broker.

### INTRODUCTION

**You** and the insured entity agree to pay **us** the premium described in the **schedule** and comply with this policy. In exchange, **we** agree to insure **you** and the **insured entity** as set out in this policy.

#### POLICY CONTRACT

This policy consists of the following parts:

1. **your** insurance proposal form, and any oral or written supporting statements or documents supplied by **you**, and
2. this policy wording (including any endorsements or warranties), and
3. the **schedule**.

#### INTERPRETING THIS POLICY

Certain words in this policy have a specific meaning. These words appear in **bold** in this policy wording and in Title Case in endorsements shown in the **schedule**. **You** will find the meaning listed in the 'Definitions' section at the end of this policy. The definitions apply to the plural and any derivatives of the bolded words.

**You** will also find examples and comments to make parts of this policy easier to understand. These examples and comments, which appear in *italics*, do not affect or limit the meaning of the section they refer to.

The headings in this policy are for reference only and do not form part of it. They are not to be used when interpreting the policy.

### WHAT YOU ARE INSURED FOR

#### A. CIVIL LIABILITY

**You** are insured for **your civil liability** arising from an **error** that occurs after the **retroactive date** in the conduct of **professional services**, provided:

1. **you** first knew, or ought to have known, of the **claim** in relation to that **error** during the **period of insurance**, and
2. **you** have advised **us** of that **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

#### B. DEFENCE COSTS

**You** are insured for all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent to defend or settle a claim alleging **civil liability** covered by this policy. This is a condition precedent to indemnity under the policy.

For the avoidance of doubt, costs and expenses incurred in defending or settling claims for non-monetary relief, including judicial review, injunctions or declarations, are not covered by this policy (*as these are not civil liability claims*). Where only part of a claim is covered, **you** are insured for that portion of the costs and expenses which **we**, acting reasonably, allocate to the insured portion of the claim.

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## AUTOMATIC EXTENSIONS

The following Automatic Extensions apply to this insurance subject to the provisions outlined in 'What you are insured for' and the terms of this policy.

Except for 'Automatic Extension Part A – Automatic Reinstatement of the Aggregate Limit', all other Automatic Extensions are included within the sum insured shown in the **schedule**, they are not in addition to it.

### A. AUTOMATIC REINSTATEMENT OF THE AGGREGATE LIMIT

1. If all **civil liability** that would otherwise be insured under 'What you are insured for Part A – Civil Liability' exceeds the sum insured shown in the **schedule**, then **we** will provide one automatic reinstatement of the sum insured.  
Provided that this does not apply:
  - 1.1 to any **claim** that is connected with the same **error** as a **claim** already met or to be met under this policy, and
  - 1.2 to 'Optional Extension Part A Employment Practices Liability' (where it applies), and
  - 1.3 until any separate policy (including an 'excess policy') that insures **you**, after the sum insured under this policy is exceeded, is exhausted.
2. If all legal costs and legal expenses that would otherwise be insured under 'What you are insured for Part B – Defence Costs' exceed the sum insured shown in the **schedule**, then **we** will provide one automatic reinstatement of the sum insured.  
Provided that this does not apply:
  - 2.1 to any **claim** that is connected with the same **error** as a **claim** already met or to be met under this policy, and
  - 2.2 to 'Automatic Extension Part D Disciplinary Proceedings or Enquiries', and
  - 2.3 until any separate policy (including an 'excess policy') that insures **you**, after the sum insured under this policy is exceeded, is exhausted.

### B. CONTINUOUS COVER

This policy is extended to insure **you** for any **claim** or circumstance that may give rise to a **claim** that **you** first knew of or ought to have known of, and that should have been advised to **us** during any previous period of insurance with **us**.

However, this cover:

1. only applies if:
  - 1.1 **you** had continuous Professional Indemnity – Civil Liability cover with **us** since that previous period of insurance, and
  - 1.2 **your** failure to disclose the **claim** or circumstance that may give rise to a **claim** at each subsequent renewal was not deliberate, and
  - 1.3 **you** advise **us** of the **claim** or circumstance that may give rise to a **claim** no later than the end of this **period of insurance**.
2. is subject to:
  - 2.1 the terms of the policy in existence when **you** first knew of the **claim** or circumstance that may give rise to a **claim**, or
  - 2.2 the terms of this policy,whichever provides lesser cover. **We** have the sole discretion to elect which policy applies.

'Exclusion Part Q' does not apply to this Extension.

### C. DEFAMATION

This policy is extended to insure **your civil liability** arising from defamation in the conduct of **professional services**.

'Exclusion Part C' does not apply to this Extension.

### D. DISCIPLINARY PROCEEDINGS AND ENQUIRIES

This policy is extended to insure all legal costs and legal expenses necessarily and reasonably incurred by **you** for **your** representation at a legal or quasi legal process enquiring:

1. into whether, in the conduct of **professional services**, **you** have breached any relevant professional code of conduct administered by any overseeing professional association, or
2. about a complaint against **you** in the conduct of **professional services**, by a statutory registration board, similar regulatory authority or coroner,

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provided that:

- (a) **you** first become aware of the enquiry during the **period of insurance**, and
- (b) **you** have advised **us** of the enquiry as soon as possible, but no later than 30 days after the **period of insurance** ends.

**You** must have **our** approval before **you** begin incurring these costs and expenses.

The most **we** will pay under this extension for all enquiries **you** become aware of, or ought to have become aware of during the **period of insurance** is \$100,000 for any one **claim** and in the aggregate, unless a different amount is shown in the **schedule**. An **excess** of \$1,000 applies for each **claim** under this extension, unless a different amount is shown in the **schedule** for Disciplinary Proceedings and Enquiries.

## E. DISHONESTY AND FRAUD

This policy is extended to insure **your civil liability** arising from a dishonest, fraudulent, criminal or malicious act or omission by an **employee** (but there is no cover for the offending **employee**). Provided also that where theft or misappropriation of money is involved:

1. **you** must have kept a separate trust account for that money and the trust account must have been audited at least annually by a qualified independent accountant, and
2. all payments or withdrawals from the trust account, whether by cheque or otherwise, must have been authorised by a **principal** or two authorised people, and
3. **you** must take reasonable precautions, including but not limited to supervision, controls, checks and audits to prevent the theft or misappropriations of monies.

However, there is no cover under this extension if **you**:

- (a) had knowledge of, or
- (b) ought to have reasonably suspected,

a dishonest, fraudulent, criminal or malicious act or omission prior to such act or omission occurring and failed to take any reasonable action to prevent it, or any loss arising from it.

'Exclusion Part E' does not apply to this Extension.

## F. EMPLOYEES

This policy is extended to insure **your employees** for **errors** in the conduct of **professional services** that result in their **civil liability**.

**We** will insure **your employees** on the same terms as **we** insure **you**.

No cover is provided to **your employees** for their dishonest, fraudulent, criminal or malicious acts, omissions or conduct.

## G. ESTATES AND LEGAL REPRESENTATIVES

This policy is extended to insure **your** estate, legal representative or assigns for **errors** in the conduct of **professional services** that result in their **civil liability** after **you** have died or become legally incompetent or insolvent.

**We** will insure **your** estate, legal representative or assigns on the same terms as **we** insure **you**.

## H. EXTENDED REPORTING PERIOD

If **we** elect not to offer renewal of this policy, then **you** may pay **us** an additional premium (being 50% of the last premium), to extend **your** cover under the policy for another 12 months. However, this will only cover **you** for **errors** that happened before the expiry of the **period of insurance**.

**You** cannot extend **your** cover if **we** cancelled this policy or declared this policy unenforceable.

If **you** choose to extend the policy as described above, then **you** must give **us** notice that **you** wish to do so within 30 days of **our** refusing to renew this policy.

## I. FAIR TRADING ACT

This policy is extended to insure **your civil liability** arising from a breach of the Fair Trading Act 1986.

'Exclusion Part H' does not apply to this Extension.

## J. INCOMING PRINCIPALS

This policy is extended to insure incoming **principals** on the same terms as **we** insure **you**, for their **civil liability** arising from an **error** that occurred while they were acting in their capacity as a sole practitioner, partner of a firm or director of a company offering **professional services** in the course of the same type of business as the **business**, provided that no other insurance is available.



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## K. INTELLECTUAL PROPERTY

This policy is extended to insure **your civil liability** arising from an infringement of any patent, copyright, design or trademark.

'Exclusion Part M' does not apply to this Extension.

## L. LOSS OF DOCUMENTS

This policy is extended to insure **your civil liability** arising from loss of or damage to **documents** that were in **your** physical custody or control at the time of loss or damage.

'Exclusion Part S' does not apply to this Extension.

## M. SUBCONTRACTORS

This policy is extended to insure **your civil liability** arising out of an **error** caused by **your** consultant, subcontractor or agent for which **you** are legally liable. However, indemnity under this extension will not extend to cover the consultant, subcontractor or agent's liability.

## OPTIONAL EXTENSIONS

The following Optional Extensions apply to this insurance if they are shown in the **schedule**. Cover under these Optional Extensions is subject to the provisions outlined in 'What you are insured for' and the terms of this policy. Optional Extensions are included within the sum insured shown in the **schedule**, they are not in addition to it.

## A. EMPLOYMENT PRACTICES LIABILITY

This policy is extended to insure **your civil liability** for **claims** brought against **you**:

1. by an **employee** arising from:
  - 1.1 unjustified dismissal or unjustified disadvantage, of that **employee**, or
  - 1.2 workplace harassment (whether sexual or otherwise) of that **employee**, or
  - 1.3 wrongful demotion of, wrongful failure to promote, wrongful deprivation of career opportunity of, wrongful discipline of or negligent evaluation of or negligent failure to grant tenure of employment to that **employee**, or
  - 1.4 workplace stress, or
2. for wrongful refusal to employ a potential **employee**, or
3. for defamation arising from employment related matters, or
4. for misrepresentation or misleading advertising as to the terms and conditions of employment, or
5. for denial of natural justice to an **employee** concerning his or her employment, that occurs after the Employment Practices Liability retroactive date shown in the **schedule**.

**You** are not insured for:

- (a) **civil liability** to pay any amount pursuant to:
  - (i) an obligation under a contract of employment, or
  - (ii) any Act of Parliament other than the Employment Relations Act 2000, or
- (b) **civil liability** in connection with:
  - (i) an industrial dispute, strike, picket, lockout, go slow or work to rule, or
  - (ii) union relations or union access, or
  - (iii) the Injury Prevention, Rehabilitation and Compensation Act 2001, workers compensation or health and safety legislation, or similar legislation, or
  - (iv) bodily injury, sickness, disease or death of any person, or
  - (v) the cost of physical modifications to premises, plant or equipment owned or occupied by **you**, or
  - (vi) a contract of employment alleged to have been obtained by unfair bargaining, or
  - (vii) the dismissal or disciplining of an **employee**, unless prior to this **you** had obtained and followed **our** advice or the advice of an employment lawyer approved by **us**, or
- (c) the cost of complying with any compliance order, or any other order in the nature of an injunction, or
- (d) legal costs that **you** incur to obtain legal advice from an employment lawyer prior to the dismissal or disciplining of an **employee**.

'Exclusions Part F, M and R' do not apply to this Extension.

The most **we** will pay under this extension for all **claims** that **you** first knew of during the **period of insurance** is the amount shown in the **schedule** as 'Employment Practices Liability'.

All legal costs and other expenses insured under this extension are included in this amount.

The **excess** shown in the **schedule** for Employment Practices Liability applies to the amount **we** pay. **You** must also pay this excess when we cover legal costs and other expenses.

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## B. JOINT VENTURES

This policy is extended to insure **your** individual and joint **civil liability** in respect of joint ventures of which **you** are a party, provided that the joint venture is shown in the **schedule**, but only in respect of the professional services shown in the schedule.

**You** are not insured for **civil liability** arising from **claims** brought against **you** by **your** joint venture partner.

No cover is provided to **your** joint venture partner. Where **we** have insured **you** for a joint liability under this extension, **we** are entitled to exercise by subrogation, **your** rights to seek indemnity or contribution from **your** joint venture partner.

'Exclusion O' does not apply to this Extension.

## C. PRIOR CORPORATE ENTITIES

This policy is extended to insure practices or entities that **you** previously practised through provided that the practice or entity is shown in the **schedule**.

**We** will insure those practices or entities on the same terms as **we** insure **you**.

## EXCLUSIONS

### A. ASBESTOS

**You** are not insured for **civil liability** in connection with asbestos.

### B. BUILDING DEFECTS

**You** are not insured for **civil liability** in connection with a building or structure:

1. being affected by moisture or water, including by the penetration of external moisture or water, or
2. being affected by the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms,
3. failing to comply with or perform to the requirements of any building code or other building standards, to meet any other standard of quality or performance whether contractual or otherwise, or to be fit for purpose, including, without limitation, liability for breach of warranty, negligence, misrepresentation, or misleading and deceptive conduct.

This exclusion does not apply to **your civil liability** that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

### C. DEFAMATION

**You** are not insured for **civil liability** in connection with defamation.

### D. DIRECTOR'S AND OFFICER'S LIABILITY

**You** are not insured for **civil liability** in connection with an **error** of a director or officer of the **business** while acting in that capacity.

### E. DISHONESTY OR FRAUD

**You** are not insured for **civil liability** in connection with any dishonest, fraudulent, criminal or malicious acts or omissions by **you**, **employees**, **principals**, or officers or directors of **you** or the **business**.

### F. EMPLOYER'S LIABILITY

**You** are not insured for **civil liability** in connection with **your** capacity or obligations as an employer.

### G. EXISTING LITIGATION

**You** are not insured for **civil liability** in connection with any litigation in existence at the commencement of the **period of insurance**.

### H. FAIR TRADING

**You** are not insured for **civil liability** in connection with the Fair Trading Act 1986.

### I. FINANCIAL POSITION

**You** are not insured for **civil liability** in connection with **your** insolvency, liquidation, receivership, bankruptcy or statutory management.

### J. FINES AND EXEMPLARY DAMAGES

**You** are not insured for:

1. any fine or penalty imposed on **you** (whether under contract or statute), or
2. any punitive or exemplary damages awarded against **you**.

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## K. FOREIGN COURTS

**You** are not insured for **civil liability** in connection with a **claim**:

1. brought in a court outside New Zealand (unless that country is shown under 'Jurisdictional Limits' in the **schedule**), or
2. brought in a court within New Zealand to enforce a judgment made by a court outside of New Zealand (unless that country is shown under 'Jurisdictional Limits' in the **schedule**), or
3. where the **claim** is governed by or the **civil liability** arises under the proper law of a country other than New Zealand (unless that country is shown under 'Jurisdictional Limits' in the **schedule**).

## L. INTELLECTUAL PROPERTY

**You** are not insured for **civil liability** in connection with an infringement of any patent, copyright, design or trademark by **you**, **employees**, **principals**, or officers or directors of **you** or the **business**.

## M. INSURED VS INSURED

**You** are not insured for **civil liability** arising from **claims** brought against **you**, by or on behalf of:

1. another party covered by this policy, or
2. any company, trust or other entity that is operated or controlled by **you** or your **employees**, nominees or trustees, or
3. any company, trust or other entity in which you or any member of your family or extended family has a direct or indirect financial interest (a shareholding of 5% or less in a publicly-listed company not constituting a financial interest), or
4. a member of your family (or extended family), or
5. any person seeking an indemnity or contribution from you in respect of an alleged or actual liability of that person, direct or indirect, to any person referred to in 1, 2, 3 or 4 above.

## N. INTENTIONAL DAMAGE

**You** are not insured for **civil liability** in connection with an **error** by **you**:

1. with the intention of causing loss, damage or injury, or
2. with reckless disregard for the consequences.

## O. JOINT VENTURES

**You** are not insured for **civil liability** in respect of joint ventures of which **you** are a party.

## P. JUDICIAL REVIEW/INJUNCTION

**You** are not insured for costs and expenses in connection with a Judicial Review or the seeking of an Injunction.

## Q. KNOWN CLAIMS AND CIRCUMSTANCES

**You** are not insured for **civil liability** in connection with any **claim** or circumstance that may give rise to a **claim** that **you** first knew of or ought to have known of, prior to the inception date of this policy.

## R. LIABILITY BY AGREEMENT

**You** are not insured for obligations assumed under or for **civil liability**:

1. arising from a breach of a contract, warranty, guarantee or undertaking, unless **you** would otherwise have been liable in the absence of that contract, warranty, guarantee or undertaking, or
2. to the extent **you** have limited any potential right to receive contribution or indemnity in relation to that **civil liability** from a person, in an arrangement or agreement with that person, or
3. that **you** agree to accept outside of what is normal in the conduct of **professional services**.

## S. LOSS OF DOCUMENTS

**You** are not insured for **civil liability** in connection with loss of or damage to documents.

## T. NUCLEAR

**You** are not insured for **civil liability** in connection with any operations employing the process of nuclear fission or fusion, or handling of radioactive material. This includes, but is not limited to:

1. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, and
2. the use, handling or transportation of any radioactive material, and
3. the use, handling or transportation of any weapon or explosive device employing nuclear fission or fusion.

## U. POLLUTION

**You** are not insured for **civil liability** in connection with **pollutants**.



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<b>V. PROPERTY LIABILITY</b>	<b>You</b> are not insured for <b>civil liability</b> in connection with <b>your</b> ownership, possession or use of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.
<b>W. REFUND OF FEES</b>	<b>You</b> are not insured for <b>civil liability</b> in connection with any dispute over: <ol style="list-style-type: none"><li>1. professional fees or charges (by way of damages or otherwise), or</li><li>2. paying trading debts or the repayment of a loan.</li></ol>
<b>X. SUPPLY OF GOODS AND WORKMANSHIP</b>	<b>You</b> are not insured for <b>civil liability</b> in connection with: <ol style="list-style-type: none"><li>1. the manufacture, installation, assembly, processing, sale, supply or distribution of goods or products by <b>you</b> or on <b>your</b> behalf, or</li><li>2. any workmanship by <b>you</b> or on <b>your</b> behalf, relating to the business of manufacturing, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment), or from <b>your</b> supervision of such workmanship.</li></ol>
<b>Y. TERRORISM</b>	<b>You</b> are not insured for <b>civil liability</b> in connection with an <b>act of terrorism</b> .
<b>Z. WAR</b>	<b>You</b> are not insured for <b>civil liability</b> in connection with: <ol style="list-style-type: none"><li>1. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or</li><li>2. confiscation, nationalisation, requisition, destruction or damage to property by any government or public or local authority.</li></ol>

## BASIS OF SETTLEMENT

<b>A. MAXIMUM AMOUNT PAYABLE – CIVIL LIABILITY</b>	The most <b>we</b> will pay in total for <b>civil liability</b> insured under 'What you are insured for Part A – Civil Liability' for: <ol style="list-style-type: none"><li>1. any one <b>claim</b>, and</li><li>2. all <b>claims</b> (subject to the Automatic Extension Part A, if it applies),</li></ol> <b>you</b> first knew of during the <b>period of insurance</b> is the sum insured shown in the <b>schedule</b> .
<b>B. MAXIMUM AMOUNT PAYABLE – DEFENCE COSTS</b>	<b>We</b> will pay <b>your</b> legal costs and other expenses under 'What you are insured for Part B – Defence Costs' in addition to the sum insured shown in the <b>schedule</b> , but up to the same amount.
<b>C. EXCESS</b>	If a <b>claim</b> arises: <ol style="list-style-type: none"><li>1. under the jurisdiction of a New Zealand Court, then the excess shown in the <b>schedule</b> for 'New Zealand Jurisdiction' will be deducted from the amount <b>we</b> pay. <b>You</b> must also pay this excess when <b>we</b> cover legal costs and other expenses if the <b>schedule</b> states 'Costs Inclusive'. If the <b>schedule</b> states 'Costs Exclusive', then no excess applies to legal costs and other expenses, and/or</li><li>2. under the jurisdiction of a court outside of New Zealand, then the excess shown in the <b>schedule</b> for 'Other Jurisdictions' will be deducted from the amount <b>we</b> pay. <b>You</b> must also pay this excess when <b>we</b> cover legal costs and other expenses, and/or</li><li>3. under 'Automatic Extension Part D Disciplinary Enquiries', then the excess shown in the <b>schedule</b> for Disciplinary Enquiries applies to the amount <b>we</b> pay.</li><li>4. under 'Optional Extension Part A Employment Practices Liability', the excess shown in the <b>schedule</b> for Employment Practices Liability applies to the amount <b>we</b> pay. <b>You</b> must also pay this excess when <b>we</b> cover legal costs and other expenses.</li></ol> <b>We</b> will deduct only one <b>excess</b> for a series of <b>claims</b> arising from one <b>error</b> . If a <b>claim</b> arises from separate <b>errors</b> then an excess will apply to each <b>error</b> .

## MANAGING YOUR CLAIM

### A. YOUR OBLIGATIONS

#### 1. Do Not Admit Liability

**You** must not:

- 1.1 admit **you** are liable, or
- 1.2 do or say anything that may prejudice **our** ability to defend the **claim** against **you** or take recovery action in **your** name.

#### 2. Advise Us

If **you** become aware of any **claim**, **you** must notify **us** immediately.

If **you** become aware of any circumstances that may give rise to a **claim**, **you** must also notify **us** immediately. Once that circumstance is notified to **us**, it is deemed to be a **claim** under this policy.

#### 3. Minimise the Loss

**You** must take all reasonable steps to minimise the **claim** and avoid any further liability arising.

#### 4. Notify the Police

**You** must immediately lay a complaint with the Police if **you** suspect criminal activity has occurred.

#### 5. Provide Full Information

When **you** make a claim **you** consent to **your** personal information in connection with the claim being:

- 5.1 disclosed to **us**, and
- 5.2 transferred to Insurance Claims Register Limited.

**You** must:

- (a) give **us** free access to examine and assess the claim, and
- (b) send any relevant correspondence or documents to **us**, and
- (c) complete a claim form and/or statutory declaration to confirm the claim if **we** request it, and
- (d) provide any other information, proof of ownership or assistance that **we** may require at any time.

#### 6. Be Truthful

If **your** claim is dishonest or fraudulent in any way, **we** may:

- 6.1 decline **your** claim either in whole or in part, and/or
- 6.2 declare this policy or all policies **you** have with **us** to be unenforceable from the date of the dishonest or fraudulent act.

This is at **our** sole discretion.

#### 7. Incurring Costs

**You** are not authorised to incur any costs or expenses without **our** prior written consent.

#### 8. Cooperation

**You** must provide any other assistance that **we** may reasonably require at any time.

### B. MANAGING YOUR CLAIM

#### 1. Allocation of Defence Costs

If a claim is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the legal costs and other expenses for insured and uninsured portions.

If all parties are unable to agree upon the allocation of the legal costs and other expenses then that allocation shall be referred to a lawyer that **we** and **you** agree to instruct, whose determination shall be binding upon all parties.

The cost of the lawyer's determination is to be taken as part of 'What you are insured for Part B'.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

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## 2. Apportionment

If **we** incur costs and/or expenses above the maximum amount payable, then:

2.1 **you** must pay this amount when **we** ask for it, or

2.2 **we** can offset that payment against what **we** must pay to **you** under this policy.

## 3. Your Defence (*Queen's Counsel Clause*)

3.1 **We** are not required to defend a **claim** against **you** unless a lawyer that **we** and **you** agree to instruct, advises that the **claim** should be defended.

3.2 In formulating his or her advice, the lawyer must be instructed to consider:

- (a) the economics of the matter, and
- (b) the damages and costs likely to be recovered, and
- (c) the likely costs of defence, and
- (d) **your** prospects of successfully defending the **claim**.

3.3 The cost of the lawyer's opinion is to be taken as part of 'What you are insured for Part B'.

3.4 If the lawyer advises that the claim should be settled and if the terms of the settlement that **we** recommend are within limits that are reasonable (in the lawyer's opinion and in the light of the matters he/she is required to consider), then:

- (a) **you** cannot object to the settlement, and
- (b) **you** must immediately pay the excess shown in the **schedule**.

## 4. Subrogation

Once **we** have accepted any part of **your claim** under this policy, **we** may assume **your** legal right of recovery.

If **we** initiate a recovery, **we** will include **your** excess and any other uninsured losses suffered by **you**. Where **we** do this, **you** agree to pay **your** proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that **we** will reimburse **your** excess from any proceeds available after the payment of the insured and uninsured losses.

## 5. Recovery from Employees

**We** will not recover any amount paid out as a claim under this policy from any of **your employees** or former **employees** unless the claim arose from that **employee's** dishonest, fraudulent, criminal or malicious acts, omissions or conduct.

## 6. Defence of Liability Claims

After **you** have made a claim under this policy, subject to 'Managing Your Claim Part B Item 3 – Your Defence (*Queen's Counsel Clause*)', **we** have the sole right (which shall be a precedent to **your** right to be covered) to:

- 6.1 act in **your** name and on **your** behalf to defend, negotiate or settle the **claim** as **we** see fit (this will be done at **our** expense), and
- 6.2 defend or legally represent **you** at a legal or quasi legal process as covered by 'Automatic Extension D Disciplinary Proceedings and Enquiries', and
- 6.3 publish a retraction or apology (in the case of defamation proceedings).

**We** may appoint **our** own lawyers to represent **you**. They will report directly to **us**.

## 7. Discharge of Liability Claims

Subject to 'Managing Your Claim Part B Item 3 – Your Defence (*Queen's Counsel Clause*)' **we** may elect at any time to pay **you**:

- 7.1 the maximum amount payable under 'What you are insured for Part A - Civil Liability', or
- 7.2 any lesser sum that the claim against **you** can be settled for.

Once **we** have paid this (plus any legal costs and other expenses already incurred up to the maximum amount payable under this policy) **our** responsibility to **you** under this policy is met in full.

## 8. Waiver of Professional Privilege

The solicitors **we** instruct to act on behalf of **you** are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from **you**.

**You** authorise the solicitors to disclose this information to **us**.

# Professional Risks / PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY

## GENERAL CONDITIONS

### A. HOW WE ADMINISTER THIS POLICY

#### 1. Authorisation

The person(s) who signed the proposal form is appointed as agent of each person who is entitled to cover under this policy, in all matters relating to this policy and to **claims** covered by it.

#### 2. Territorial Limits

This policy covers an **error** occurring anywhere in the world.

#### 3. Cancellation and Modification

##### 3.1 By You

**You** may ask **us** to cancel or modify this policy at any time. **We** must agree in writing to any modification before it will take effect.

##### 3.2 By Us

**We** may cancel or modify this policy by advising **you** (or **your** Broker or Agent) by letter, fax or email. Cancellation or modification will take effect at 4.00pm, on the 30th day after the date of **our** advice.

**We** will refund the proportion of unused premium paid, calculated from the date of cancellation.

You are not insured for claims notified after the cancellation date.

#### 4. Protecting our Position

Once **you** have advised **us** of a **claim**, **we** will take whatever action **we** consider appropriate to protect **our** position. This does not however:

- 4.1 indicate that **you** are entitled to be covered under this policy, or
- 4.2 jeopardise **our** rights under this policy or at law.

#### 5. Other Insurance

**You** must notify **us** as soon as **you** know of any other insurance policy that covers **you** for any of the risks covered under this policy.

If **you** or anyone else who can claim under this policy can claim under any other insurance, **we** will only pay over and above the limit payable by the other insurances.

#### 6. Currency

All sums in this policy wording (including any attachments) and in the **schedule** are in New Zealand dollars unless otherwise specified in the **schedule**.

#### 7. GST

Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:

- 7.1 all sums insured exclude GST, and
- 7.2 all sub limits exclude GST, and
- 7.3 all excesses include GST, and
- 7.4 GST will be added, where applicable, to claim payments.

# Professional Risks / PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY

## B. LAWS AND ACTS THAT GOVERN THIS POLICY

1. **Acts of Parliament**  
Where this policy refers to any Act of Parliament, it also includes any subordinate legislation made under it, and any subsequent Acts or Regulations.
2. **Disputes about this policy**  
The law of New Zealand applies to disputes about this policy, and the New Zealand Courts have exclusive jurisdiction.
3. **Insurance Law Reform Acts**  
The exclusions and conditions in this policy are subject to **your** rights under the Insurance Law Reform Acts 1977 and 1985.

## C. YOUR OBLIGATIONS

1. **Comply with the Policy**  
**You** (and any other person or entity **we** cover) must comply with the terms of this policy at all times. If **you** fail to comply, **we** may, at **our** sole discretion, not pay **your** claim.
2. **Provide Accurate Information**  
**You** must make sure all statements and representations **you** make to **us** at any time are truthful and complete.
3. **Reasonable Care**  
**You** must take reasonable care at all times to avoid circumstances that could result in a claim. **Your** claim will not be covered if **you** are reckless or grossly irresponsible.
4. **Change in Circumstances**  
**You** must tell **us** immediately if there is a material:
  - 4.1 increase in the risk insured, or
  - 4.2 alteration of the risk insured.Once **you** have told **us** of the change, **we** may then alter the terms, premium or cancel this policy.  
If **you** fail to notify **us** about a change in the risk insured, **we** may:
  - (a) declare this policy unenforceable, or
  - (b) decline any subsequent claim either in whole or in part.These actions will be taken from the date **you** knew, or ought to have known, of the increase or alteration in the risk insured.  
*For avoidance of any doubt, information is 'material' where we would have made different decisions about either:*
  - (i) accepting your insurance, or
  - (ii) setting the terms of your insurance,*if we had known that information. If in any doubt, notify us anyway.*



# Professional Risks / PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY

## DEFINITIONS

The definitions apply to the plural and any derivatives of the bolded words. *For example, the definition of 'we' includes 'us' and 'our'.*

<b>act of terrorism</b>	<p>Includes any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce 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 that:</p> <ol style="list-style-type: none"><li>1. involves violence against one or more persons, or</li><li>2. involves damage to property, or</li><li>3. endangers life other than that of the person committing the action, or</li><li>4. creates a risk to health or safety of the public or a section of the public, or</li><li>5. is designed to interfere with or disrupt an electronic system.</li></ol>
<b>business</b>	<p>The business described in the <b>schedule</b>.</p>
<b>civil liability</b>	<p>Liability for compensatory damages (but not fines, penalties, or punitive or exemplary damages), and interest thereon, which a court or arbitrator orders <b>you</b> to pay in civil proceedings, or settlements negotiated by <b>us</b> in respect of such liability, in relation to a <b>claim</b> alleging <b>civil liability</b>, for which <b>you</b> become liable. Where a claim both alleges <b>civil liability</b> and claims other relief, <b>you</b> are insured for that portion of the costs and expenses of the person making the claim, for which you become liable, which we, acting reasonably, allocate to the insured portion of the claim.</p>
<b>claim</b>	<p>The earliest of the following:</p> <ol style="list-style-type: none"><li>1. service on <b>you</b> of a legal or arbitral civil proceeding seeking compensatory damages against you by any third party,</li><li>2. your receipt of written notice from any third party that they hold <b>you</b> liable for loss or intend to commence legal or arbitral civil proceedings against <b>you</b> seeking compensatory damages, arising out of an error covered by this policy, regardless of whether the claimed amount exceeds the excess.</li></ol>
<b>documents</b>	<p>Physical documents of any nature, excluding:</p> <ol style="list-style-type: none"><li>1. bearer bonds, coupons, bank notes, cheques, Bills of Exchange, currency notes, stamps or other negotiable instruments, and</li><li>2. electronically stored data, software or computer programs for or in respect of any computer system.</li></ol>
<b>employee</b>	<p>A person who is deemed to be employed by the <b>business</b> pursuant to the Employment Relations Act 2000.</p>
<b>error</b>	<p>Any actual or alleged error, omission, act or conduct.</p>
<b>period of insurance</b>	<p>The period you are insured for. This is shown in the <b>schedule</b>.</p>
<b>pollutants</b>	<p>Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.</p>
<b>principal</b>	<p>A sole practitioner, a partner of a firm, or a director of a company where that firm or company is covered by this policy.</p>

# *Professional Risks /* PROFESSIONAL INDEMNITY – CIVIL LIABILITY INSURANCE POLICY

<b>professional services</b>	<b>Your</b> professional services, shown in the <b>schedule</b> .
<b>retroactive date</b>	The date shown in the <b>schedule</b> .
<b>schedule</b>	The latest version of the Schedule <b>we</b> issue to <b>you</b> for this policy.
<b>we</b>	NZI, a business division of IAG New Zealand Limited. <i>We may also use the words, 'us', 'our' or 'company' to describe NZI.</i>
<b>you</b>	The following: <ol style="list-style-type: none"><li>1. any person or entity shown in the <b>schedule</b> as an Insured and all current and former <b>principals</b> of that entity,</li><li>2. any subsidiary entity that is created while this policy is in force, by any person or entity shown in the <b>schedule</b> as an Insured, but only if that entity is engaged in the conduct of <b>professional services</b>,</li><li>3. any person who, during the <b>period of insurance</b>, becomes a <b>principal</b> of an entity shown in the <b>schedule</b> as an Insured, but only in respect of work undertaken for that entity.</li></ol> <i>We may also use the word 'insured' to describe you.</i>



*NZI is a business division of IAG New Zealand Limited, a wholly owned subsidiary of Insurance Australia Group, Australasia's largest general insurer. Established in 1859, it is today one of the country's largest and longest-serving fire and general insurance brands, protecting tens of thousands of New Zealanders every year.*

*Through our broad range of commercial, personal, marine, professional risks and rural insurance products, we pride ourselves on helping people to achieve the best protection for their assets.*

*We partner with a network of skilled and experienced brokers and other insurance intermediaries who distribute our products. We pay remuneration to our brokers and intermediaries when they issue our policies, and when these policies are renewed or varied.*

*To find out more about the advantages of choosing NZI, talk to your broker or visit [nzi.co.nz](http://nzi.co.nz).*

*Printed using vegetable based mineral oil free inks on paper from an environmentally certified and responsibly managed forest and mill.*

**[nzi.co.nz](http://nzi.co.nz)**