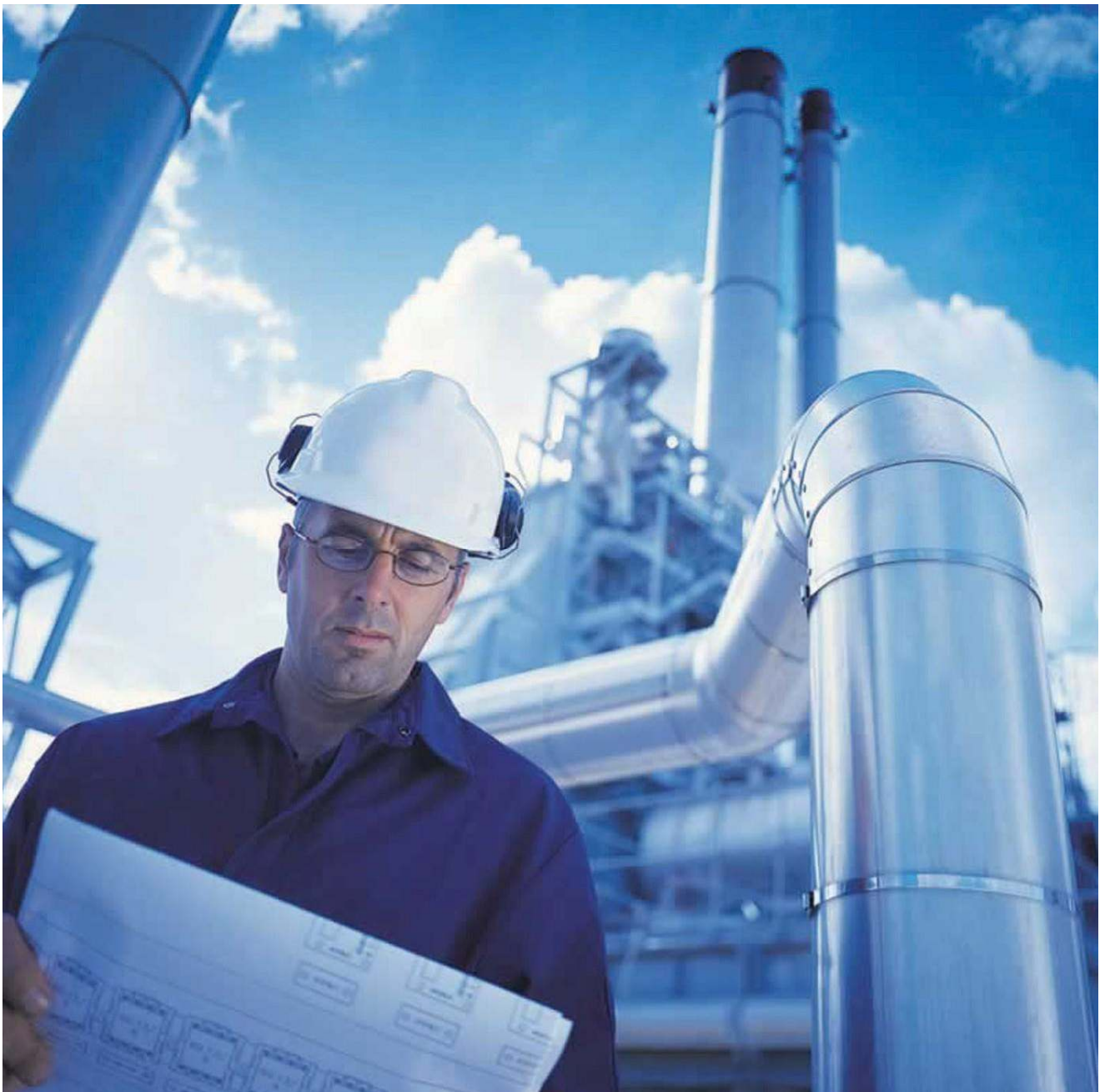


Single Project Professional Indemnity Insurance

Policy Wording



Important

Statutory Notice - Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy.

This policy is a 'Claims Made' liability insurance policy. It only provides *cover* if:

A *claim* is made against an *insured*, by some other person, during the period when the policy is in force; and

The *claim* arises out of circumstances committed, attempted or alleged to have been committed or attempted after the *retroactive date* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an *insured* becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a *claim* against them by some other person, then provided that the *insured* notifies Us of the matter before this policy expires, We may not refuse to indemnify merely because a *claim* resulting from the matter is not made against the *insured* while the policy is in force.

If an *insured*, inadvertently or otherwise, does not notify the relevant occurrence or facts to Us before the expiry of the policy, the *insured* will not have the benefit of section 40(3) and We may refuse to pay any subsequent *claim*, notwithstanding that the events giving rise to it or the circumstances alleged in it may have taken place during the *period of insurance*.

If a *claim* is actually made against the *insured* by some other person during the *period of insurance* but is not notified to Us until after the policy has expired, We may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

Contents

Policy Schedule	3
Welcome to Pacific Indemnity	4
About Pacific Indemnity	4
Duty of Disclosure	4
Our contract with you	4
Policy Wording	5
1. Insuring Clauses	
1.1 Coverage provided.....	5
1.2 Defence costs	5
2. Extensions of Cover	
2.1 Claims preparation costs.....	5
2.2 Compensatory premises.....	5
2.3 Court attendance costs	5
2.4 Contractual liability.....	6
2.5 Defamation.....	6
2.6 Estates and Legal representatives	6
2.7 Fraud and Dishonesty.....	6
2.8 Inquiries	6
2.9 Intellectual property including Breach of confidentiality	6
2.10 Limitation of liability contracts	6
2.11 Loss of documents.....	7
2.12 Mitigation of loss	7
2.13 Novated contracts	7
2.14 Principals indemnity.....	8
2.15 Privacy.....	8
2.16 Proportionate liability.....	8
2.17 Public relations expenses	8
2.18 Subsidiary cover.....	8
2.19 Trade Practices / Competition and Consumers Acts	8
2.20 Vicarious liability	9
3. Definitions	
3.1 Agent	9
3.2 Civil liability.....	9
3.3 Claim.....	9
3.4 Compensation	9
3.5 Cover	9
3.6 Defence costs	9
3.7 Document.....	9
3.8 Employee.....	10
3.9 Excess	10
3.10 Inquiry.....	10
3.11 Inquiry costs	10
3.12 Insured.....	10
3.13 Insured's product	10
3.14 Intellectual property rights	10
3.15 Limit of liability	10
3.16 Loss	11
3.17 Money	11
3.18 Novated contract	11
3.19 Period of insurance	11
3.20 Pollutant.....	11
3.21 Premium.....	11

3.22	Principal	11
3.23	Professional services	11
3.24	Project	11
3.25	Proportionate liability legislation	12
3.26	Retroactive date	12
3.27	Schedule	12
3.28	Submission	12
3.29	Subsidiary	12
3.30	Terrorist act	12
4.	Limit of Liability	
4.1	Limit of liability	12
4.2	Excess	12
5.	Exclusions	
5.1	Asbestos	13
5.2	Construction related activities	13
5.3	Contractual and Commercial liability	13
5.4	Employer's liability	13
5.5	Estimation of construction costs	13
5.6	Faulty products, Efficacy or Workmanship	13
5.7	Fraud and Dishonesty and Intentional damage or Loss	13
5.8	North American jurisdiction	14
5.9	Nuclear risk	14
5.10	Other insurance	14
5.11	Owners and Occupiers liability	14
5.12	Fines or Penalties	14
5.13	Personal injury or Property damage	14
5.14	Pollution	14
5.15	Prior and Pending	14
5.16	Related entities	15
5.17	Retroactive date	15
5.18	War and Terrorism	15
6.	Claims Conditions	
6.1	Allocation	15
6.2	Co-operation	16
6.3	Defence and Settlement	16
6.4	Excess	16
6.5	Loss prevention and Mitigation	16
6.6	Payments in respect to Goods and Services Tax	17
6.7	Reporting and Notice	17
6.8	Settlement disputes	17
6.9	Subrogation	17
7.	General Conditions	
7.1	Change of risk	18
7.2	Changes to the policy	18
7.3	Notice	18
7.4	Policy interpretation and Construction	18
7.5	Privacy	18
7.6	Proper law and Jurisdiction	18
7.7	Sanctions regulations	18
7.8	Severability and Non-imputation	19
7.9	Valuation and Foreign currency	19
	Endorsement Schedule	20

Single Project Professional Indemnity Policy Schedule

This *schedule* along with the *submission* and the policy with Endorsements shall constitute the contract between Us and the *insured*.

Policy number

Named Insured Any party contracted by the Principal on an Insured Project.

- Principal**
- a. The Crown in right of the State of New South Wales, represented by the Office of Project Remediate, NSW Department of Customer Services (“Office of Project Remediate”)
 - b. Owner Corporations formally signed up to the Project Remediate funding agreement.
 - c. Hansen Yuncken (as Managing Contractor)

Insured Project All projects undertaken by or on behalf of the Named Insured specifically relating to works performed under the Project Remediate program and commenced during the Policy Period; however, unless otherwise agreed and accepted by the Insurer and listed in the Schedule as an Endorsed Project, this Policy does not cover Excluded Projects.

Insured Project includes any incidental remediation work up to a construction value of \$50,000 completed concurrently with the funded program and which has been declared to Us as part of the annual policy period adjustment.

Excluded Projects Any project with an original total project value of greater than \$10,000,000. Project Value means construction costs plus any fees or margin associated with the project.

Endorsed Projects

Contract Reference	Address	Start Date	Value
█	██████████	21/10/2022	\$13,623,674
█	██	TBC	\$14,799,912
█	████████████████████	TBC	\$22,861,993
█	██	21/10/2022	\$10,596,727
█	██ ██	21/10/2022	\$20,412,337
█	██ ██	TBC	\$13,903,137
█	████████████████████	21/10/2022	\$15,070,819
█	██ ██	21/10/2022	\$9,957,571
█	██ ██	TBC	\$24,853,819

Professional services	One or more of the following:	
	(a) design or specification, including advice, oversight and supervision in respect of design;	
	(b) drafting, drawings and technical documentation;	
	(c) technical calculation;	
	(d) measurement, testing and /or certification of materials;	
	(e) project or construction management where the <i>insured</i> is specifically remunerated by way of a fee for service in respect of the overall control and supervision of a contract;	
	(f) feasibility studies;	
	(g) programming and time flow management;	
	(h) surveying);	
	(i) inspections;	
	(j) issue of permits and certificates	
	(k) tender;	
	(l) Conduct of due diligence in respect of the cladding rectification program;	
	(m) Other services declared and agreed by us, and;	
	(n) Training in respect of (a) – (n) above.	
Limit of liability	AUD10,000,000 for each <i>claim</i> and AUD100,000,000 in the aggregate for all projects.	
Sub-Limits of Liability	Extension 2.8 Inquiries	\$250,000
	Extension 2.11 Loss of documents	\$1,000,000
	Extension 2.17 Public relations expenses	\$250,000
Policy Period	From 27/5/2022	at 4pm local standard time
	To 30/6/2023	at 4pm local standard time
Period of insurance	Means the period commencing with the entering into of each Project in respect of an Insured Project such Contract is entered into during the Policy Period, until 10 years from the entering into of a Contract for that Insured Project.	
Retroactive date	Unlimited excluding known claims and claims arising from known circumstances	
Excess	AUD\$50,000	each and every <i>claim</i>
Other insurance	Project arranged Contract Works Policy	
	Underwriter:	Liberty Specialty Markets
	Policy number:	TBA
	Project arranged Third Party Liability Policy	
	Underwriter	
	Policy number	

Endorsements

Provided in full in the attached Endorsement Schedule at the end of the policy

1. Additional Definitions
 - a. Constructlon Firm
 - b. Endorsed Projects
 - c. Contract
2. Amendment to 4.1 Limit of Liability
3. Inclusion of Condition - Primary Insurance Clause
4. Amendment to Exclusions
 - a. Delete & replace Exclusion 5.6 (Faulty products, Efficacy or Workmanship)

Issued by at on Year

Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639 - on behalf of Berkley Insurance Australia trading as Berkley Re ABN 53 126 559 706

Welcome to Pacific Indemnity

About Pacific Indemnity

The insurer of this product is Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639 - on behalf of Berkley Insurance Australia trading as Berkley Re ABN 53 126 559 706. In this document, Pacific Indemnity may also be expressed as 'we', 'us' or 'our'.

Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Our contract with you

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

This policy is made up of:

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

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

Single Project Professional Indemnity Insurance Policy

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

1. Insuring Clauses

1.1 Coverage provided

We will pay to or on behalf of the *insured* any *loss* arising from any *civil liability claim* first made and notified during the *period of insurance*, based solely on the *insured's* provision of *professional services* in relation to the *project*.

1.2 Defence costs

We will also pay on behalf of the *insured* the *defence costs* incurred in respect of any *claim* covered under Insuring Clause 1.1 or under any applicable Extension of Cover. We will pay for *defence costs* as and when they are incurred, and prior to final adjudication of the *claim*.

Defence costs are subject to the *excess* and are included within the *limit of liability* specified in the *schedule*.

2. Extensions of Cover

Subject to the terms, conditions and exclusions, including all definitions of the policy, We further agree to extend cover provided under this policy as follows:

2.1 Claims preparation costs

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

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

Payments provided under this extension, shall not include any *defence costs*.

2.2 Compensatory penalties

Notwithstanding the Definitions of *civil liability* and *loss*, Exclusion 5.12. in respect of Fines or Penalties', we will *cover claims* for compensatory civil penalties. Our total liability for the payment of compensatory civil penalties and all associated *defence cost* under the policy shall not exceed \$250,000 in the aggregate for all *claims*, which is included within and not in addition to the *limit of liability*.

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

2.2.1 for which we are legally prohibited at law from indemnifying the *insured*;

2.2.2 based upon, attributable to or in consequence of any:

2.2.2.1 wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or

2.2.2.2 gross negligence or recklessness; or

2.2.2.3 requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

2.3 Court attendance costs

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

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

2.4 Contractual liability

Notwithstanding Exclusion 5.3 'Contractual and Commercial liability' sub-section 5.3.1, we will *cover* the *insured* against *civil liability* arising from a *claim* under an indemnity and/or hold harmless provision of a contract, to the extent that such *civil liability* arises from the *insured's* performance of *professional services*.

2.5 Defamation

We agree to pay on behalf of the *insured* the *loss* which the *insured* is legally liable to pay as a result of a *civil liability claim* alleging libel, slander, defamation or injurious falsehood by the *insured* in the provision of *professional services*. No *cover* is provided under this extension for any *claim* resulting from any intentional libel, slander or defamation.

2.6 Estates and Legal representatives

We agree to *cover* the estate, heirs, legal representatives or assignees of any *insured* who is incapable of managing their own affairs by reason of mental disorder or other incapacity or who is deceased, insolvent or bankrupt, in the same manner and to the same extent that the relevant *insureds* would be entitled to be indemnified in respect of *civil liability claims* made against them. This clause only provides an indemnity in accordance with the Insuring Clause in respect of *civil liability claims* solely based on the conduct of the relevant *insured*. It does not respond where the conduct is that of the *insured's* estate, heir, legal representative or assignee.

2.7 Fraud and Dishonesty

Notwithstanding Exclusion 5.7, we agree to *cover* the *insured* for *loss* resulting from a *civil liability claim* alleging criminal, fraudulent or dishonest conduct of an *employee* or any *agent* in the provision of *professional services* provided that:

2.7.1 no *cover* is available to the dishonest *employees* themselves, or at all where you have knowingly engaged in or condoned such conduct; or

2.7.2 no *cover* is available in respect of a *claim* arising from or in any way connected with the *loss* of *money*.

2.8 Inquiries

We agree to pay on behalf of the *insured* the *inquiry costs* which the *insured* incurs on its own behalf, with our prior written consent, in preparing for and whilst attending an *inquiry* provided that the notice requiring the *insured* to attend the *inquiry* is first served upon the *insured* during the *period of insurance* and reported to us during the *period of insurance*.

The maximum amount payable by Us under this extension in respect of any one *inquiry*, *claims* with *inquiries* and *defence costs* with *inquiry costs* are in the aggregate and is the *sub-limit of liability* specified in the *schedule*.

2.9 Intellectual property including Breach of confidentiality

We agree that the *cover* provided by Insuring Clause 1.1 of this policy will extend to Us paying on behalf of the *insured* the *loss* which the *insured* becomes legally liable to pay as a result of a *civil liability claim* alleging the *insured* has infringed *intellectual property rights* or unintentional breach of confidentiality in the provision of *professional services*. No *cover* is provided under this extension for *claims* resulting from any intentional infringement of *intellectual property rights*.

2.10 Limitation of liability contracts

Notwithstanding Claims Conditions 6.9, We recognise that the *insured* will enter into contracts with other parties relating to the performance of the *professional services* which may waive or otherwise limit the liability of such parties. We agree that such contracts shall not prejudice the *insured's* right to *cover* under the policy.

However the *cover* provided by this extension shall not apply to contracts (whether written or otherwise) entered into as a result of a dispute which in any way involves the *insured*.

2.11 Loss of documents

We agree to pay on behalf of the *insured* the costs the *insured* is legally liable to pay for replacing or restoring any *documents* which are destroyed, damaged or after diligent search cannot be found, where the costs have been incurred with our prior written consent.

Such destruction, damage or loss must result from the provision of *professional services* by the *insured* in relation to the *project* and be discovered for the first time during the *period of insurance* and reported to us during the *period of insurance*.

We will not pay for any destruction, damage or loss resulting from:

- 2.11.1 wear and tear or gradual deterioration;
- 2.11.2 any computer virus; or
- 2.11.3 any loss of *money*.

The maximum amount payable by Us under this extension in respect of anyone *claim* and in the aggregate for all *claims*, inclusive of *defence costs*, is the *sub-limit of liability* specified in the *schedule*.

2.12 Mitigation of loss

We agree to pay the direct costs and expenses necessarily and reasonably incurred by the *insured*, in taking action to rectify, or mitigate the effects of any act, error or omission of the *insured* in connection with the provision of *professional services*, that otherwise would be the subject of a covered *civil liability claim* under this policy, provided always that the *insured*:

- 2.12.1 first discovers such act error or omission during the *period of insurance* and notifies Us of such act error or omission during the *period of insurance*;
- 2.12.2 notifies Us during the *period of insurance* of the *insured's* intention to take such action and obtains our prior written consent (which shall not be unreasonably withheld) before incurring any direct costs or expenses; and
- 2.12.3 can satisfy Us that if a *civil liability claim* were made against it, it would have a legal liability in respect of the *claim*.

Payments provided under this extension, shall not include any *defence costs*. Any costs and expenses paid under this extension shall be part of and not in addition to the *limit of liability*.

2.13 Novated contracts

Notwithstanding Exclusion 5.3 'Contractual and Commercial liability' sub-section 5.3.1, we will not apply this exclusion to a liability which the *insured* has assumed only by reason of the novation of a *novated contract* in circumstances where:

- 2.13.1 the *insured* purchases or acquires another business or contract;
- 2.13.2 the *insured* assumes responsibility for *professional services* previously undertaken by another party; or
- 2.13.3 the *insured's* contract to provide *professional services* is novated to another party, provided that any *claim* for *civil liability* arises out of *professional services* conducted by the *insured* prior to the novation of the contract to another party.

Provided this extension shall not include:

- (i) liabilities in the *novated contract* that were not otherwise covered by this policy prior to such contract being novated; or
- (ii) any additional liabilities the *insured* has assumed by virtue of the novation of a *novated contract* to the *insured*.

2.14 Principals indemnity

To the extent that it is contractually required of the *insured*, this policy shall also cover the *principal* in regards to any *civil liability claim* arising out of the provision of *professional services* undertaken by or on behalf of the *insured* for the *principal*.

Provided that:

- 2.14.1 any *claim* is such that if made upon the *insured*, that the *insured* would be entitled to be indemnified by this policy;
- 2.14.2 We shall have the conduct and control of all *claims* for which the *principal* seeks cover hereunder or from the *insured*; and
- 2.14.3 This policy shall not extend to provide cover in respect of the *principal's* own breach of professional duty or other events covered.

2.15 Privacy

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

2.16 Proportionate liability

Notwithstanding Exclusion 5.3 'Contractual and Commercial liability' sub-section 5.3.1, we will not apply this exclusion to a liability that the *insured* has assumed under contract by reason of it having contracted out of the operation of the *proportionate liability legislation*.

2.17 Public relations expenses

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

- 2.17.1 we have given prior written consent to retain the services of such public relations consultants (such consent to not be unreasonably withheld or delayed); and
- 2.17.2 our total aggregate liability during any one *period of insurance* for all public relations expenses shall not exceed the *sub-limit of liability* specified in the *schedule*.

2.18 Subsidiary cover

We agree that the cover provided by this policy will extend to any *subsidiary* of any *insured* acquired or created after commencement of the policy in respect of the *subsidiary's* performance of the *insured's professional services* in relation to the *project*.

2.19 Trade Practices / Competition and Consumers Acts

We agree that the cover provided by Insuring Clause 1.1 of the policy will extend to Us paying on behalf of the *insured* loss which the *insured* becomes legally liable to pay as a result of a *civil liability claim* alleging the *insured* has engaged in conduct that is misleading, deceptive or likely to mislead or deceive under the terms of the Trade Practices Act 1974 (Cth), Competition and Consumer Act 2010 (Cth) or any Fair Trading Legislation of any State or Territory of Australia in the provision of *professional services*.

2.20 Vicarious liability

We agree that the *cover* provided by Insuring Clause 1.1 of this policy will extend to Us paying:

2.20.1 on behalf of the *insured* the *loss* which the *insured* is legally liable to pay as a result of a *civil liability claim* alleging a breach of professional duty of an *agent*; or

2.20.2 to the *insured* the *loss* which the *insured* incurs as a result of a breach of professional duty of an *agent*,

in the provision of *professional services*.

We will not be liable under this extension for the *agent's* own liability.

3. Definitions

Whenever the following words are used in this policy, they have the meanings set out below:

3.1 Agent

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

3.2 Civil liability

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

3.3 Claim

claim means any civil proceedings or written or oral demand by a third party for *compensation* or damages against an *insured*.

3.4 Compensation

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

3.5 Cover

cover means indemnity.

3.6 Defence costs

defence costs means costs and expenses incurred by Us, or by the *insured* but only with our prior written consent, solely for the benefit of the *insured* in the investigation, settlement or defence of a *claim* covered under this policy.

Defence costs do not include the *insured's* salaries, wages, travel or accommodation expenses nor do they include costs incurred by Us in determining whether the policy provides insurance to the *insured*.

3.7 Document

document means a *document* of any nature whether written, printed or reproduced by any method including computer records or electronic data, in the possession or control of the *insured* or the property of the *insured* which does not include *money*.

3.8 Employee

employee means:

- 3.8.1 any person, other than a director or partner of the *insured*, who is or has been under a contract of employment or apprenticeship or any work experience or similar scheme with the *insured*, solely in connection with the *professional services* provided by the *insured*;
- 3.8.2 any contractor or consultant who:
 - 3.8.2.1 has an oral or written contract with the *insured*, (including any *subsidiary* of any *insured*), to perform *professional services* solely for and on behalf of the *insured*; and
 - 3.8.2.2 is a deemed worker under the workers compensation laws of the Australian State or Territory in which the contractor or consultant is performing the *professional services*.

This definition does not include sub-contractors.

3.9 Excess

excess means the amount specified in the *schedule*.

3.10 Inquiry

inquiry means any *inquiry* or hearing related to the provision of *professional services* by the *insured* in relation to the *project* if findings from such *inquiry* or hearing could lead to a *claim* being made against the *insured* which may be covered under this policy.

3.11 Inquiry costs

inquiry costs means legal, assessor's, adjuster's and expert witness costs but do not include the *insured's* salaries, wages, travel or accommodation expenses.

3.12 Insured

insured means:

- 3.12.1 the Insured named in the *schedule*;
- 3.12.2 any current or former partner, principal or *employee* of the *insured* or any *subsidiary* in 3.12.1 above, but only whilst providing *professional services* on behalf of the *insured*.

3.13 Insured's product

insured's product means any product or good manufactured, supplied, sold, installed, assembled, repaired, erected or maintained by the *insured*.

3.14 Intellectual property rights

intellectual property rights means all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including copyright, trademarks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information concerning trade secrets, know-how, formulae, methods or routines and other proprietary technology.

3.15 Limit of liability

limit of liability is the amount specified in the *schedule*.

3.16 Loss

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

- 3.16.1 *compensation* and/or claimant's costs pursuant to an award or judgment against the *insured*;
- 3.16.2 settlements negotiated by Us and consented to by the *insured*;
- 3.16.3 settlements negotiated by the *insured* but only with our prior written consent;
- 3.16.4 *defence costs*;
- 3.16.5 *inquiry costs*.

But *loss* does not include:

- (i) wages, salary, commission, fees, charges and other form of remuneration or profit to be repaid, lost or foregone by the *insured*, as a result of a *claim*;
- (ii) any component of an award or settlement which represents the cost of performance of the *insured's* original contractual obligations, non-fulfilment or negligent performance of which has given rise to the *claim*;
- (iii) aggravated, punitive or exemplary damages or for civil or criminal penalties, fines or sanctions; or
- (iv) for the purpose of the *limit of liability*, sub-limits and other applicable terms and conditions of the policy, *loss* also includes all other amounts covered by the policy, including those amounts which are not dependent upon the making of a *claim* against the *insured*.

3.17 Money

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

3.18 Novated contract

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

3.19 Period of insurance

period of insurance is the period specified in the *schedule*.

3.20 Pollutant

pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, noise, acids, alkalis, compounds, chemicals, mould or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

3.21 Premium

premium is the amount specified in the *schedule*.

3.22 Principal

principal is the Principal as named in the *schedule*.

3.23 Professional services

professional services means the Professional services specified in the *schedule* provided they are performed in relation to the *project* by or under the control and direct supervision of qualified professional persons employed or engaged by an *insured* who are currently certified, licensed, registered or authorised under any relevant legislation or industry codes of practice governing the relevant profession.

3.24 Project

project means the Project specified in the *schedule*.

3.25 Proportionate liability legislation

proportionate liability legislation means Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVAA, Civil Liability Act 2002 (WA) Pt 1F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Competition and Consumer Act 2010 (Cth), Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252 and any like legislation, all as may be amended from time to time.

3.26 Retroactive date

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

3.27 Schedule

schedule means the Schedule attached to this policy.

3.28 Submission

submission means the following documents:

3.29 Subsidiary

subsidiary shall have the meaning attributed to it in the Corporations Act 2001 (Cth).

3.30 Terrorist act

terrorist act shall have the meaning attributed to it in the Terrorism Insurance Act 2003 (Cth).

4. Limit to Liability

4.1 Limit of Liability

The maximum amount payable by Us under this policy for all *loss, defence costs* and all other amounts insured under this policy arising from any one *claim* and in the aggregate from all *claims* is the *limit of liability* specified in the *schedule*.

The *limit of liability* is inclusive of any *defence costs* and other amounts insured under this policy.

The *limit of liability* does not increase if there is more than one person, firm or incorporated body *insured* under this policy or if more than one insured person causes or contributes to the *claim*.

4.2 Excess

We will only pay the amount which is above the *excess* specified in the *schedule* in respect of:

4.2.1 each *loss* and associated *defence costs*; and

4.2.2 each *claim* under the policy for other amounts insured.

The *excess* shall be the first amount borne by the *insured* and shall remain uninsured.

All *claims* and associated *defence costs* and *claims* made under the policy for other amounts insured that arise from one act, error or omission or series of related acts, errors or omissions shall require the *insured* to bear only one *excess*.

5. Exclusions

We will not cover the *insured* for any *loss*, *defence costs* or any other amounts insured under this policy which arise directly or indirectly out of or are in any way connected with:

5.1 Asbestos

asbestos, in whatever form or quantity.

5.2 Construction Related Activities

the performance or supervision of construction related activities which would normally be undertaken by a construction contractor.

5.3 Contractual and Commercial liability

- 5.3.1 any contractual liability or assumed liability, unless the *insured* would in any event be legally liable in the absence of such contractual or assumed liability;
- 5.3.2 any liability assumed by an *insured* under any guarantee or warranty unless the *insured* would in any event be legally liable in the absence of such guarantee or warranty;
- 5.3.3 the insolvency, receivership, administration, bankruptcy or liquidation of any *insured*;
- 5.3.4 the failure to provide, effect, or maintain any bond, surety or insurance;
- 5.3.5 any trading debt incurred by the *insured*; or
- 5.3.6 the refund of professional fees.

5.4 Employer's liability

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

This exclusion applies notwithstanding Exclusion 5.13.

5.5 Estimation of construction costs

cost overruns, cost estimations, cost planning or additional costs.

5.6 Faulty products, Efficacy or Workmanship

- 5.6.1 any defect (or alleged defect) in an *insured's product*;
- 5.6.2 any failure of an *insured's product* to meet the level of performance, quality, fitness or durability expressly warranted or represented by the *insured*; or
- 5.6.3 any defect (or alleged defect) in construction, assembly, installation, maintenance or workmanship generally, unless directly arising out of a breach of duty in the performance of the *insured* or its agent in the provision of *professional services*.

5.7 Fraud and Dishonesty and Intentional damage or Loss

- 5.7.1 any malicious, criminal, wilfully reckless, fraudulent or dishonest conduct committed or allegedly committed by the *insured* or its *agent*;
- 5.7.2 any *civil liability* incurred by the *insured* with the intention of causing loss, damage or injury, or with reckless disregard for the consequences; or
- 5.7.3 any wilful breach of any statute, contract or duty by any *insured* or its *agent*.

5.8 North American jurisdiction

- 5.8.1 any *claim* made or proceedings brought in or determined wholly or partly pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates;
- 5.8.2 the enforcement of judgements, orders or awards obtained within or determined wholly or partly pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates; or
- 5.8.3 any arbitration, mediation or other form of alternative dispute mechanism conducted in or determined wholly or partly pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates.

5.9 Nuclear risk

ionising radiation or the contamination by radioactivity from any nuclear fuel, installation, reactor or other nuclear assembly, or from any nuclear waste from the combustion of any nuclear fuel.

5.10 Other insurance

any other insurance policy specified in the *schedule* except to the extent that the *loss* or other amount insured exceeds the *cover* provided by the other insurance policy or policies.

5.11 Owners and Occupiers liability

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

5.12 Fines or Penalties

- 5.12.1 fines or penalties;
- 5.12.2 liquidated damages, imposed upon the *insured* by contract or agreement, except to the extent that the *insured* would have been liable for that damage in the absence of any such contract or agreement;
- 5.12.3 exemplary, aggravated, multiple or punitive damages; or
- 5.12.4 any other damages deemed uninsurable by law.

5.13 Personal injury or Property damage

- 5.13.1 death or personal injury to any person; or
- 5.13.2 physical loss of or damage to, or destruction of any tangible property including any loss of use of tangible property,
unless directly arising out of a breach of duty in the performance of the *insured's professional services*.

5.14 Pollution

the discharge, dispersal, release or escape of any *pollutant* into or upon land, the atmosphere or any watercourse or body of water unless such discharge, release or escape is a sudden, identifiable, unintended and unexpected happening which takes place in its entirety at a specific time and place.

5.15 Prior and Pending

any *claim*:

- 5.15.1 made against or by the *insured* prior to the commencement of the *period of insurance*; or
- 5.15.2 directly or indirectly arising from or attributable to any facts or circumstances of which the *insured* was aware or of which a reasonable person in the circumstances would have been aware, prior to the commencement of the *period of insurance*, as matters out of which a *claim* against or by the *insured* may arise.

5.16 Related entities

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

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

Exclusion 5.16 does not apply when the *claim* was emanating from a third party in respect of *professional services* provided by the *insured*, provided that:

- (i) any *claim* is such that if made upon the *insured*, that the *insured* would be entitled to be indemnified;
- (ii) we shall have the conduct and control of all *claims* for which the related entities (defined within 5.16 above), seeks indemnity hereunder or from the *insured*; and
- (iii) this policy shall not extend to provide cover in respect of any related entities (defined within 5.16 above) own breach of professional duty or other events covered by this policy.

5.17 Retroactive date

any act, error or omission committed or allegedly committed prior to the *retroactive date*.

5.18 War and Terrorism

- 5.18.1 war, invasion, act of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war;
- 5.18.2 mutiny, military uprising, insurrection, rebellion, revolution, usurped power, martial law, a state of siege, nationalisation, confiscation, requisition, seizure of or loss of or damage to property by order of the government or by any public or local authority;
- 5.18.3 strike, riot, civil commotion or popular uprising; or
- 5.18.4 any actual or threatened *terrorist act*.

6. Claims Conditions

6.1 Allocation

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

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

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

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

6.2 Co-operation

The *insured* must at its own expense disclose to Us all relevant information and provide full co-operation and assistance to Us so as to enable us to investigate and defend any *claim* or to determine our liability under this policy.

6.3 Defence and Settlement

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

The *insured* shall, at its own cost, up on our request give all such information, co-operation and assistance to Us as may reasonably be required, to enable the investigation and defence of a *claim* and to make any cross-claim for contribution, indemnity or damages and/or to determine Our liability under this policy.

Where We elect to assume the conduct of the defence and/or settlement of a *claim*:

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

6.4 Excess

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

The *excess* shall be paid by the *insured* and shall be applicable to each *claim* and shall include *loss* and *defence costs*. The *excess* will be the first amount borne by the *insured* and shall remain uninsured.

6.5 Loss prevention and Mitigation

- 6.5.1 The *insured* shall take all reasonable steps to prevent any breach of professional duty or circumstance which may cause or contribute to any *claim* or *loss* which may be covered under the policy; and
- 6.5.2 The *insured* must act reasonably at all times and take all reasonable steps to prevent, avert or minimise any known circumstances likely to cause any *loss* that might give rise to a *claim* under this policy.

6.6 Payments in respect to Goods and Services Tax

Where payment is made under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to that acquisition, whether or not that acquisition is made.

Where payment is made under this policy as *compensation* instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that the *insured* would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

6.7 Reporting and Notice

The *insured* as a condition precedent to the right to be indemnified under this policy shall provide written notice to Us as soon as the *insured* becomes aware of any *claim* made against an *insured*, but in all events no later than 90 days after the expiry of the period of insurance.

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

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

Pacific Indemnity Underwriting Solutions Pty Ltd
Level 3, 84 William Street Melbourne 3000
PO Box 2 Collins Street West, Melbourne 8007
Email: claims@pacificindemnity.com.au

6.8 Settlement disputes

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

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

6.9 Subrogation

If *cover* is granted under this policy in respect of any *claim* or *loss* then We shall be subrogated to all the *insured's* rights of recovery in respect of such *claim* or *loss* regardless of whether or not any payment has been made or the *insured* has been compensated in full for their *loss*. The *insured* will give all such assistance in the exercise of rights of recovery.

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

We will not exercise any such right of subrogation against any *insured* or directors, officers or *employees* unless the *claim* is brought about or contributed to by the dishonest, fraudulent, reckless, criminal or malicious act or omission of the *insured* or their directors, officers or *employees*

We will not exercise any such right of subrogation against any Municipal Building Surveyor or any individual or organisation associated with a parent of or a subsidiary of any *insured*. This includes any Victorian Government Agency, Victorian Government Department or Victorian Government Owned Corporation.

7. General Conditions

7.1 Change of risk

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

7.2 Changes to the policy

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

7.3 Notice

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

7.4 Policy interpretation and Construction

The headings in this policy are for descriptive purposes only and do not form part of this policy for the purposes of its construction or operation. Words used in the singular shall include the plural and vice versa.

7.5 Privacy

We are bound by the Privacy Act 1988. We collect, disclose and handle information, and in some cases personal or sensitive (e.g. health) information, about you ('your details') to assess applications, administer policies, contact you, enhance our products and services and manage claims ('Purposes'). If you do not provide your information, we may not be able to do those things. By providing us, our representatives or your intermediary with information, you consent to us using, disclosing to third parties and collecting from third parties your details for the Purposes.

We may disclose your details, including your sensitive information, to relevant third parties including your intermediary, affiliates of Us, insurers, reinsurers, our service providers, our business partners, health practitioners, your employer, parties affected by claims, government bodies, regulators, law enforcement bodies and as required by law, within Australia and overseas.

We may obtain your details from relevant third parties, including those listed above. Before giving us information about another person, please give them a copy of this document. Laws authorising or requiring us to collect information include the Insurance Contracts Act 1984, Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Corporations Act 2001, Autonomous Sanctions Act 2011, A New Tax System (Goods and Services Tax) Act 1999 and other financial services, crime prevention, trade sanctions and tax laws.

7.6 Proper law and Jurisdiction

It is agreed that the proper law of this policy is the law of the Commonwealth of Australia and of the Australian State or Territory in which the policy is issued by us. We and the *insured* agree to the exclusive jurisdiction of the appropriate Australian Court in relation to all matters arising under or in connection with it.

7.7 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, We shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to the *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* which would violate any applicable trade or economic sanctions, law or regulation.

7.8 Severability and Non-imputation

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

- 7.8.1 any failure by an *insured* to comply with the duty of disclosure shall not be imputed to any other *insured*, where the other *insured* is innocent of and had no prior knowledge of the failure; and
- 7.8.2 for the purposes of the exclusions (other than Exclusion 5.15), no facts pertaining to, conduct of or knowledge possessed by an *insured* shall be imputed to any other *insured*.

7.9 Valuation and Foreign currency

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

Endorsements to Schedule

Additional Definitions

Construction Firm means any construction company approved by Office of Project Remediate or Hansen Yuncken (as Managing Contractor) to undertake remedial work which is funded under the Project Remediate program.

Endorsed Projects means those Insured Projects stated in the Schedule under "Endorsed Projects" and any other Projects that have been referred to and accepted by the Us.

Contract means the formal contract between the Principals and a Construction firm.

Amendment to 4.1 Limit of Liability

4.1 Limit of Liability is deleted in its entirety and replaced with:

4.1 Limit of Liability

The maximum amount payable by Us under this policy for all loss, defence costs and all other amounts insured under this policy arising from any one claim and in the aggregate from all claims is the \$10,000,000 for any one Project and \$100,000,000 for all Insured Projects. For the avoidance of doubt the Limit of Liability applies to the maximum amount of \$10,000,000 for any one Project regardless of how many policies we have issued, or will issue.

The limit of liability is inclusive of any defence costs and other amounts insured under this policy.

The limit of liability does not increase if there is more than one person, firm or incorporated body insured under this policy or if more than one insured person causes or contributes to the claim.

Inclusion of the following Condition

Primary insurance clause

We agree that this is the primary policy covering breach of professional duty in respect of the Insured Project and agree on the basis that all fees with respect to the Insured Project have been declared, we will not seek any contribution from any insurers of any other valid professional indemnity insurances held by any Insured with regard to any Claim(s) paid or payable by the Insurers under this Policy.

Amendment to Exclusions

Exclusion 5.6 is deleted in its entirety and replaced with

5.6 Faulty products, Efficacy or Workmanship

5.6.1 any defect (or alleged defect) in an insured's product;

5.6.2 any failure of an insured's product to meet the level of performance, quality, fitness or durability expressly warranted or represented by the insured; or

5.6.3 any defect (or alleged defect) in construction, assembly, installation, maintenance or workmanship generally;

unless directly arising out of a breach of duty in the performance of the insured or its agent in the provision of professional services.