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Office of Project Remediate

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 of facts to Us before the expiry of the policy, the insured will not have the benefits 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.

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POLICY SCHEDULE

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 Projects

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.

Excluded Project

Any project with an original total project value of greater than \$10,000,000.

Project value means construction costs plus in any fees or margin associated with the project.

Endorsed Projects:

Refer below

Limit of Indemnity

\$10,000,000 any one claim and any one project and \$100,000,000 in the aggregate for all projects.

Sub-Limit of Indemnity

Extension 2.8 Enquiries	\$250,000
Extension 2.11 Loss of Documents	\$1,000,000
Extension 2.7 Public Relations Expenses	\$250,000

Policy Period

From: 1 April 2022
To: 30 June 2023

Both dates at 4.00pm Local Time at Melbourne

Period of Insurance

means the period commencing with the entering into of each Project in respect of an Insured Project provided such Contract is entered into during the Policy Period, until 10 years from the entering into of a Contract for that Insured Project.

Professional Services

Per policy wording

Retroactive Date

Without limitation of date - excluding known claims and claims arising from known circumstances

Jurisdiction Limits:

Worldwide, excluding U.S.A. and Canada

Deductible

\$50,000 each and every loss exclusive of costs

Policy Wording

Single Project Professional Indemnity Policy

Endorsements**Long Term Agreement**

We confirm our offer to provide a two year agreement between Insurer and Office of Project Remediate (OPR) with respect to Project Remediate Principal arrange Professional Indemnity Policy, number 02-ENG-I-00xxxxxx

Insurer agrees that the terms and conditions of the above Policy including the agreed rate shall remain unchanged for the next renewal period being 1st June 2023 to 1st June 2024 unless the following occurs:

1. The loss ratio (including any outstanding reserves) is 50% or greater; or
2. This Policy has been cancelled by either party; or
3. There has been any material change in Insurer reinsurance, which directly impacts the Pacific's ability to honour its commitments under this agreement.

Should any one of the above occur Insurer reserves the right to re-negotiate any terms, conditions and applicable rate applied to the above Policy

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 Owners Corporations 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 to 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.

Exclusion 5.5 is deleted in its entirety and replaced with

5.5 Pre-Estimation of construction costs

any act or omission in the process of formulating a contract price, cost estimate, tender or expression of interest or similar process. However this exclusion shall not apply post Contract award for the estimation of construction costs if the Professional Services are provided by a qualified quantity surveyor.

DUTY OF DISCLOSURE

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 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 recognises 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 any one 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, intaking 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
the estimation of construction costs unless undertaken by a qualified quantity surveyor.
- 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
 - 5.12.3. insured would have been liable for that damage in the absence of any such contract or agreement;
 - 5.12.4. exemplary, aggravated, multiple or punitive damages; or
 - 5.12.5. 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
- 5.16.2.which is owned, managed or operated directly or indirectly by any insured; or
- 5.16.3.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;
- 5.16.4.any joint-venture partner of any insured;
- 5.16.5.any parent or controlling entity, successor or assign of any insured;
- 5.16.6.any other person or entity, including but not limited to a trustee:
 - 5.16.6.1. who or which is controlled or operated by any insured; or
 - 5.16.6.2. 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:

Insurers information

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.

8. Endorsements

8.1. Additional Definitions

Construction Firm means any construction company approved by Office of Project Remediate or Hansen Yuncken (as Project Manager) 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.

8.2. 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.

8.3. Amendment to Exclusions

Exclusion 5.6 is deleted in its entirety and replaced with

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.

Exclusion 5.5 is deleted in its entirety and replaced with

5.5 Pre-Estimation of construction costs

any act or omission in the process of formulating a contract price, cost estimate, tender or expression of interest or similar process. However this exclusion shall not apply post Contract award for the estimation of construction costs if the Professional Services are provided by a qualified quantity surveyor.

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